

United States
Circuit Court of Appeals

For the Ninth Circuit.

VICTOR VON ARX,

Plaintiff in Error,

vs.

W. A. SHAFER and JOHN HENSON,

Defendants in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the
District of Alaska, Division No. 1.

Filed

JAN 25 1917

F. D. Monkton,
Clerk.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

JOHN H. COBB, Juneau, Alaska,
Attorney for Plaintiff in Error.

CHENEY & ZIEGLER, Juneau, Alaska,
Attorneys for Defendants in Error.

*In the District Court for Alaska, Division Number
One, at Juneau.*

#1247-A.

VICTOR VON ARX,

Plaintiff,

vs.

W. A. SHAFER and JOHN HENSON,

Defendants.

Complaint.

The above-named plaintiff complaining of the above-named defendants, for cause of action alleges:

I.

That the defendant W. A. Shafer was, at all the time hereinafter mentioned, the city marshal of the city of Douglas, Alaska; and the defendant John Henson, was at such times, the city magistrate of the said city of Douglas.

II.

That on the 11th day of September, 1914, the said defendants, conspiring together to injure, harass, and humiliate the plaintiff, and bring him into public disgrace, the said Shafer, pursuant to said conspiracy and without any warrant, or writ of any kind, and without official or other business of any kind,

came to the plaintiff's house in Douglas City, Alaska, and for the purpose of provoking plaintiff into some pretended violation of the law, sought to force his way into said house, and upon being told by plaintiff to leave, then and there assaulted plaintiff with a deadly weapon, to wit, a revolver, and then and there without a warrant or any legal right so to do, arrested plaintiff and confined him in the city jail, of which defendants by virtue of other offices, had custody and control.

III.

That plaintiff was arrested as aforesaid, about 11 o'clock A. M. by the said Shafer, who failed, refused and neglected to take him before [1*] the nearest, or any magistrate, as it was his duty to do, but at once confined plaintiff in the said jail. That nevertheless, plaintiff through his friends and acquaintances immediately requested and demanded of defendants, that the charges against him, if any, be examined by the said city magistrate and that he be either discharged from said arrest or admitted to bail; and plaintiff was then and there ready, willing and able to furnish any reasonable bail that might be required of him.

IV.

That defendants, pursuant to their scheme, understanding and purpose aforesaid, neglected and refused either to have plaintiff taken before a magistrate, or permit him to furnish bail, but kept him confined in said jail without any charges being pre-

*Page-number appearing at foot of page of original certified Transcript of Record.

ferred against him, and without permitting him to furnish bail, until noon of the next day. That the jail in which plaintiff was confined, was foul, dirty, ill-kept, and swarming with vermin, and plaintiff for said period of twenty-five hours was forced to undergo, the greatest physical discomfort, as well as to suffer from feelings of outrage, shame and humiliation. That during said period plaintiff was purposely and intentionally deprived by defendants, of food or drink fit for a human being, whereby his sufferings and discomfort were greatly increased. That by reason of the premises, plaintiff was damaged in the sum of one thousand dollars.

V.

That in committing the wrongs aforesaid defendants were animated solely by malice, hatred, and ill-will toward plaintiff, and deliberately and intentionally, abused the powers of the offices they respectively held, for the purpose of gratifying such malice, whereby plaintiff was damaged, and should recover the further sum of one thousand dollars as punitive or exemplary damages. [2]

Wherefore, plaintiff prays judgment for the sum of two thousand dollars, and all costs of suit.

J. H. COBB,

Attorney for Plaintiff.

United States of America,
Territory of Alaska,—ss.

Virtor Von Arx, first being duly sworn, on oath deposes and says: I am the above-named plaintiff, and have heard read the above and foregoing complaint

and the same is true as I verily believe.

VICTOR VON ARX.

Subscribed and sworn to before me this the 25 day of March, 1915.

[Notarial Seal]

A. W. FOX,

Notary Public in and for Alaska.

My commission expires Apr. 27, 1918.

Filed in the District Court, District of Alaska, First Division. Mar. 26, 1915. J. W. Bell, Clerk.
By _____, Deputy. [3]

In the District Court for the District of Alaska, Division Number One, at Juneau.

1247-A.

VICTOR VON ARX,

Plaintiff,

vs.

W. A. SHAFER and JOHN HENSON,

Amended Answer.

Comes now W. A. Shafer, one of the above-named defendants, and for his separate answer to the complaint of the plaintiff filed in the above-entitled cause, alleges as follows:

I.

Answering paragraph number one of said complaint defendant admits the same.

II.

Answering paragraph number two of said complaint, defendant admits that on the 11th day of September, 1914, he arrested the plaintiff in the town of

Douglas, Alaska, and denies each and every allegation and each and every part thereof in said paragraph contained, except as herein admitted.

III.

Answering paragraphs numbers three, four and five of plaintiff's complaint, defendant denies the same and each and every allegation and each and every part thereof in said paragraphs contained.

FURTHER ANSWERING SAID COMPLAINT, AND AS AN AFFIRMATIVE DEFENSE THERETO, DEFENDANT ALLEGES:

I.

That on the 11th day of September, 1914, at Douglas, Alaska, at a place within the corporate boundaries of said city of Douglas, the plaintiff, Victor Von Arx, committed a misdemeanor in violation of section 15 of ordinance number 39 of said town, by then and there using vile, profane and obscene language; that said crime was committed in the presence of defendant; that defendant was then and there the city marshal for the city of Douglas; that in the performance [4] of his duties as such officer, he then and there arrested said plaintiff, placed him in the city jail, and thereafter took him before John Henson, the city magistrate of said town of Douglas; that plaintiff was then tried and convicted for said offense.

WHEREFORE, defendant prays that plaintiff take nothing by this action, and that he recover his costs and disbursements herein expended.

Z. R. CHENEY,
Attorney for Defendant.

United States of America,
Territory of Alaska,—ss.

W. A. Shafer, being first duly sworn, on oath deposes and says: I am the defendant in the above-entitled action, have read the foregoing answer, know the contents thereof, and the same is true as I verily believe.

W. A. SHAFER,
Defendant.

Subscribed and sworn to before me this 9th day of July, 1915.

A. H. ZIEGLER,

[Notarial Seal]

Notary Public for Alaska.

My commission expires July 3, 1917.

Filed in the District Court, District of Alaska,
First Division. Jul. 10, 1915. J. W. Bell, Clerk.
By _____, Deputy. [5]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

1247-A.

VICTOR VON ARX,

Plaintiff,

vs.

W. A. SHAFER and JOHN HENSON.

Amended Answer.

Comes now John Henson, one of the above-named defendants, and for his separate answer to the com-

plaint of the plaintiff filed in the above-entitled cause, alleges as follows:

I.

Answering paragraph number one of said Complaint, defendant admits the same.

II.

Answering paragraph number two of said complaint, defendant admits that on the 11th day of September, 1914, plaintiff was arrested by W. A. Shafer, at Douglas, Alaska, and denies each and every allegation and each and every part thereof in said paragraph contained, except as herein admitted.

III.

Answering paragraphs numbers three, four and five of plaintiff's complaint, defendant denies the same and each and every allegation and each and every part thereof in said paragraphs contained.

FURTHER ANSWERING SAID COMPLAINT, AND AS AN AFFIRMATIVE DEFENSE THERETO, DEFENDANT ALLEGES:

I.

That on the 11th day of September, 1914, at Douglas, Alaska, at a place within the corporate boundaries of said city of Douglas, the plaintiff, Victor Von Arx, committed a misdemeanor in violation of section 15 of ordinance Number 39 of said town, by then and there using vile, profane and obscene language; that said crime was committed in the presence of said W. A. Shafer; that said Shafer was [6] then and there the city marshal for the city of Douglas; that in the performance of his duties as such officer, he then and there arrested said plain-

tiff, placed him in the city jail, swore out a complaint before defendant as municipal magistrate of said town of Douglas, charging plaintiff with the violation of the ordinance above-mentioned, and afterwards produced plaintiff in the court over which this defendant presides, where said plaintiff was tried and convicted for said offense.

Z. R. CHENEY,
Attorney for Defendant.

United States of America,
Territory of Alaska,—ss.

John Henson, being first duly sworn, on oath deposes and says: I am the defendant in the above-entitled action, have read the foregoing amended answer, know the contents thereof and the same is true as I verily believe.

JOHN HENSON,
Defendant.

Subscribed and sworn to before me this 9th day of July, 1915.

[Notarial Seal]

A. H. ZIEGLER,
Notary Public for Alaska.

My commission expires July 3, 1917.

Filed in the District Court, District of Alaska,
First Division. Jul. 10, 1915. J. W. Bell, Clerk.
By _____, Deputy. [7]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1247-A.

VICTOR VON ARX,

Plaintiff,

vs.

W. A. SHAFER and JOHN HANSON,

Defendants.

Reply to Amended Answer of W. A. Shafer.

Now comes the plaintiff by his attorney and for reply to the amended answer of W. A. Shafer alleges:

He denies all and singular the allegations in the affirmative defense in said answer contained except as herein expressly admitted, and alleges the facts to be: That on the 11th day of September, 1914, the said defendant, with the purpose and intention of committing the wrongs and torts in the complaint set out, went to the plaintiff's house in the city of Douglas and attempted, against the will of the plaintiff, to force his way into the same with the purpose and intention of making an excuse, if possible, for the arrest of the plaintiff; that the said defendant had no business or occasion to be at the place aforesaid, and was there solely for the purpose of committing the wrongs and torts in the complaint alleged, and was seeking and intending, as city marshal of the city of Douglas, to abuse the powers of his office in that respect; that pursuant to said purpose he did then and there, about the hour of eleven o'clock A. M. of said day, and without a warrant,

arrest the plaintiff and place him in the city jail as alleged in said complaint; but he did not take the plaintiff before [8] John Hanson, the city magistrate of the city of Douglas, until late in the following day and did not swear out a complaint against him until late in the following day. That it is true that on the trial on said complaint before John Hanson, defendant herein, and pursuant to the conspiracy alleged in the complaint, the plaintiff was convicted for an alleged violation of the ordinances of the city of Douglas, by the said John Hanson, but on an appeal from said conviction and judgment, same was set aside by the District Court for Alaska on the ground that the evidence failed to show any crime or violation of said ordinances and the plaintiff was discharged with his costs in that behalf, all of which is manifest from the record therein.

J. H. COBB,

Attorney for Plaintiff.

United States of America,
Territory of Alaska,—ss.

Victor Von Arx, being first duly sworn, on oath deposes and says: I am the plaintiff in the above-entitled action. I have heard read the foregoing answer and the same is true as I verily believe.

VICTOR VON ARX.

Subscribed and sworn to before me this 15th day of July, 1915.

[Notarial Seal]

E. L. COBB,

Notary Public in and for Alaska.

My commission expires Dec. 3, 1918.

Filed in the District Court, District of Alaska,
First Division. Jul. 15, 1915. J. W. Bell, Clerk.
By _____, Deputy. [9]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1247-A.

VICTOR VON ARX,

Plaintiff,

vs.

W. A. SHAFER and JOHN HANSON,

Defendants.

**Reply to Amended Answer of the Defendant John
Hanson.**

Now comes the plaintiff by his attorney and for reply to the affirmative defense alleged in the answer of the defendant John Hanson says:

He denies all and singular the allegations in the said affirmative answer contained, except as hereinafter expressly admitted and alleged, and alleges that the truth concerning said matter is as follows, to wit:

That on the 11th day of September, 1914, the said W. A. Shafer, codefendant herein, came to the plaintiff's house for the purpose of arresting the plaintiff and for the purpose and as an excuse for the wrongs and torts he intended to commit, attempted to force an entrance into the said house and provoke the plaintiff, if possible, into committing some supposed violation of the ordinances of the city of Douglas. That at said time and place the said

Shafer did arrest the plaintiff and place him in the city jail, that said arrest was not made in the performance of his duties as city marshal, but solely pursuant to his preconceived scheme and intent to wrong and humiliate the plaintiff, as alleged in the complaint herein. That the said Shafer did not swear out a complaint against the plaintiff until the following [10] day and did not produce the plaintiff in the court over which the defendant presided. It is true that pursuant to the plan and scheme alleged in the complaint the said defendant, John Hanson, did adjudge the plaintiff guilty of an alleged violation of an ordinance of the city of Douglas, but the plaintiff appealed from said judgment and conviction to this Honorable Court, and on said appeal said conviction was set aside and for naught held on the ground that the evidence failed to show that any offense had been committed and the plaintiff was discharged from said prosecution with his costs.

J. H. COBB,
Attorney for Plaintiff.

United States of America,
Territory of Alaska,—ss.

Victor Von Arx, being first duly sworn, on oath deposes and says: I am the plaintiff in the above-entitled action. I have heard read the foregoing reply and the same is true as I verily believe.

VICTOR VON ARX.

Subscribed and sworn to before me this the 15th day of July, 1915.

[Notarial Seal]

E. L. COBB,

Notary Public in and for Alaska.

My commission expires Dec. 3, 1918.

Filed in the District Court, District of Alaska, First Division. Jul. 15, 1915. J. W. Bell, Clerk.

By _____, Deputy. [11]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

CASE No. 1247-A.

VICTOR VON ARX,

Plaintiff,

vs.

W. A. SHAFER and JOHN HENSON,

Defendants.

Judgment.

This cause came on regularly for trial before the Court, and a jury of 12 qualified citizens of the Territory of Alaska on Friday the 22d day of October, 1915, at the hour of 10 o'clock in the forenoon of said day;

The plaintiff appeared in person and by his counsel, J. H. Cobb, Esq., the defendants in person and by their counsel, Messrs. Cheney & Ziegler;

Plaintiff introduced evidence in support of his complaint and rested,

Whereupon attorneys for defendants made a motion for a nonsuit upon the ground that the plaintiff had failed to make out a case against either the de-

fendant, W. A. Shafer or the defendant, John Henson.

After arguments, the Court granted the motion for nonsuit as to the defendant John Henson; to which plaintiff then and there excepted.

Whereupon the trial proceeded; the defendant, Shafer, then introduced evidence in his behalf and rested; whereupon attorneys for the defendant moved the Court to instruct the jury to return a verdict for the defendant, W. A. Shafer; after arguments, the motion for such instructed verdict was granted, and the Court instructed the jury to return a verdict for the defendant, W. A. Shafer; to which instruction and ruling the plaintiff then and there excepted. [12]

Whereupon, the jury without retiring from the box proceeded to elect R. E. Murphy, one of the jury, as its foreman, and returned and filed a verdict for the defendant, W. A. Shafer, in words and figures as follows, to wit:

*“In the District Court for the Territory of Alaska,
Division No. One, at Juneau.*

No. 1247-A.

VICTOR VON ARX,

Plaintiff,

vs.

W. A. SHAFER and JOHN HENSON,

Defendants.

Verdict.

We, the jury in the above-entitled cause, do find for the defendant, W. A. Shafer.

(Signed) R. E. MURPHY,
Foreman."

—which said verdict was received and filed in open court with the clerk of said court;

And now more than three days having elapsed since the rendition of said verdict, and the plaintiff having failed to file a motion for a new trial or a motion in arrest of judgment as provided by Statute, and the Court being fully advised in the premises,

It is ordered, adjudged and decreed that the plaintiff take nothing by this action, and that the defendants, W. A. Shafer and John Henson recover of and from the plaintiff their costs and disbursements herein expended, and taxed at the sum of \$97.50.

Done in open court this 11th day of November, A. D., 1915.

ROBERT W. JENNINGS,
Judge.

Entered Court Journal No. L, page 170,
O. K.—COBB.

Filed in the District Court, District of Alaska,
First Division. Nov. 11, 1915. J. W. Bell, Clerk.
By C. Z. Denny, Deputy. [13]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 1247-A.

VICTOR VON ARX,

Plaintiff,

vs.

W. A. SHAFER and JOHN HENSON,

Defendants.

Transcript of Testimony. [14]

Testimony of Victor Van Ark, for Plaintiff.

VICTOR VAN ARX, the plaintiff herein, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Direct Examination.

(By Mr. COBB.)

Q. State your name? A. Victor Van Arx.

Q. Where do you live, Mr. Van Arx?

A. In Douglas.

Q. How long have you lived in Douglas?

A. 1902 I came up.

Q. You were living in Douglas then during the month of September, 1914? A. Yes.

Q. Do you know the defendant, W. A. Shafer?

A. Yes.

Q. What official position, if any, was he holding at that time—what was he in September, 1914—what office did he hold?

A. He was the marshal—Shafer was the city marshal.

(Testimony of Victor Van Ark.)

Q. The city marshal?

A. City marshal; yes, sir.

Q. Do you know the defendant, John Henson?

A. Yes.

Q. What was he at that time? A. City Judge.

Q. City Judge, city magistrate? A. Yes.

Q. Do you remember the occasion when Mr. Shafer came down to one of your houses there about the 11th of September? A. Yes, I know.

Q. The day you were arrested? [16]

A. Yes.

Q. Now, Mr. Van Arx, I want you to tell the jury just what happened on that occasion?

A. Well, I have then to start in with the 8th of September.

Q. The 8th?

A. Yes; the 8th of September. The 8th Hunsaker, he gives himself,—it is not true as Cheney told, that he killed his wife and another man in the house,—he killed his wife and the other man in the street, for jealousy, and he went home; so much I hear; I heard the trouble, but I don't know anything that happened; and he went home, and in the morning I heard a shot again about 2 o'clock. Well, the next day they told me that Hunsaker killed himself and killed his wife and killed the other man; Hunsaker had the key, and he shot himself in the house. It was pretty warm weather, and I waited for a while, and then I asked what happened here, and everything was pretty dirty, and dirt in every corner, and I could not let it go much longer, and

(Testimony of Victor Van Ark.)

I found they were gone and locked the place; therefore I went over to the United States Commissioner and asked him for the key; I asked him if he went in there, and he said it looked pretty bad in there and it ought to be cleaned up. The United States Commissioner told me that it was too bad that nobody cleaned it up, and it would have to be cleaned right away. I asked Marshal Shafer, or O'Connor, if he had got the key, that I don't know who has locked the door, and he said, "You go and clean it up right away; it is in the middle of the town and it is bad in that condition in warm weather." I went and asked Mr. O'Connor for the key, and asked all over, and nobody knew nothing about it. In the evening John came to [17] me and told me that the commissioner told him to tell me to go in that place and clean that up, that it cannot be left this way. I told him, "All right, I cannot get in; I cannot get in through the roof," so there was a window in the roof, and I go in that and get down to get the key for somebody to clean up. I turned the key and took it home, and I just got home when Ed Hunsaker, his brother, come to me and told me, "I would like to get in the house to save the effects that was in there, and for to take out my part." I told him, "Yes, I got some, and you got some;" most of the furniture was mine, and I said, "I go down with you and show you what is mine, and you can do what you want with his effects."

Q. That was on the 11th of September.

A. That was on the 13th, the day I got arrested—the 13th, I believe.

(Testimony of Victor Van Ark.)

Q. The day you were arrested?

A. Yes. I told this man that I eat dinner and go and get a key; Marshal Shafer go in for the effects, to look after the effects; I was in there, in the Hunsaker house. Marshal Shafer do to me all bad things during the last half dozen year, I told this man that, and I told him, "You tell Marshal Shafer if he no got paper to go in my cabin, I no let him in"—you tell him that. After while I tell Marshal Shafer, "Stay here. I suppose you got papers in the hand for right to go in; you know very well I don't allow you in my property any more—you do me so much bad things." He told me, "I will go in; what's the matter with you, you old bastard." I take the key to try the key, and it ain't the right key. Well, I ain't got the right key, so I go home and get the key, and come back; and I come in and open [18] the door and go in the kitchen, and then Hunsaker come in, and Marshal Shafer push Hunsaker aside and tried to get in first. I told him, "Go away from my property; I don't want you at all; if you haven't got a paper you go away; I know you a long time"; and he talk nice then, and said, "What is the matter with you? All the time we are good friends." We go in the kitchen, and Shafer takes both hands and pull me out on the sidewalk and out on the street, and I know I have to do something, and I hit him down.

Q. Knocked him down?

A. Yes; and I called for help and Ed. Hunsaker come up and helped him; he got me by the arm and

(Testimony of Victor Van Ark.)

the other man got me by the other arm, and just so quick as Marshal Shafer was free with his hands he jumped up and pulled a revolver, and threw the revolver on me, and pressed it on me, and told me I was under arrest, and he pushed me in the back half a dozen times; I go ahead, and he push me this way (indicating) down through the street, and we come to the bank, and I see John Henson in the door of the bank, and Marshal Shafer tell me to go over to the city jail, and I look and see John Henson here in the doorway.

Q. What bank?

A. No, not the bank, in his office, and I want to go to John Henson, and he grabbed me, and put me in jail, and I was in jail all evening, and there was another man in jail who was crazy—

Q. The other man was in the jail?

A. Yes; I didn't get locked in; they let the crazy man be with me, and do just what he wanted with me, and called me what he wanted to call me, and I was afraid of this man; they didn't lock me in, and the next day I showed Mr. Cobb and said that was the open cell they left the man in and me. [19] In the evening when I was in jail come Henson and told me—

Mr. CHENEY.—Just a moment—I object to any statement by Henson.

The COURT.—Don't state anything that somebody told you unless Mr. Shafer or Mr. Henson was there.

A. Judge, please, Mr. Henson came to me for tell-

(Testimony of Victor Van Ark.)

ing me that Fuesi came to John Henson to get bail to get me out.

Q. About what time of day was it that he put you in jail?

A. Oh, he put me in jail maybe—it cannot be after eleven or twelve; I was just eating dinner.

Q. You had not been to dinner yet? A. No.

Q. How long did he keep you in jail?

A. Oh, he keep me in jail until next day about 1 o'clock.

Q. That was after I got over there and got you out of jail? A. Yes.

Q. Do you remember the amount of bail you put up then—fifty dollars? A. Yes.

Mr. CHENEY.—I object to counsel testifying.

Q. What condition was the jail in?

A. Oh, well, the jail was a jail, and I cannot say anything only they put a crazy man in there with me.

Q. Was it clean?

Mr. CHENEY.—I object to this testimony about there being a crazy man in this jail; counsel has not plead anything of this kind, and if that is going to be used in this case in the element of damage it should be pleaded in the complaint; there was no mention made of it, and this is the first I have heard of it.

The COURT.—Gentlemen of the jury, the fact that there was a crazy man in jail has nothing to do with this case, and you will absolutely [20] disregard such testimony.

(Testimony of Victor Van Ark.)

the other man got me by the other arm, and just so quick as Marshal Shafer was free with his hands he jumped up and pulled a revolver, and threw the revolver on me, and pressed it on me, and told me I was under arrest, and he pushed me in the back half a dozen times; I go ahead, and he push me this way (indicating) down through the street, and we come to the bank, and I see John Henson in the door of the bank, and Marshal Shafer tell me to go over to the city jail, and I look and see John Henson here in the doorway.

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Q. The other man was in the jail?

A. Yes; I didn't get locked in; they let the crazy man be with me, and do just what he wanted with me, and called me what he wanted to call me, and I was afraid of this man; they didn't lock me in, and the next day I showed Mr. Cobb and said that was the open cell they left the man in and me. [19] In the evening when I was in jail come Henson and told me—

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Q. You had not been to dinner yet? A. No.

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Q. That was after I got over there and got you out of jail? A. Yes.

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Mr. CHENEY.—I object to this testimony about there being a crazy man in this jail; counsel has not plead anything of this kind, and if that is going to be used in this case in the element of damage it should be pleaded in the complaint; there was no mention made of it, and this is the first I have heard of it.

The COURT.—Gentlemen of the jury, the fact that there was a crazy man in jail has nothing to do with this case, and you will absolutely [20] disregard such testimony.

(Testimony of Victor Van Ark.)

Q. What condition was the jail in with reference to being clean and decent, or otherwise?

A. Oh, well, it was dirty.

Q. Now, state what food and drink was given you, if any, during the 25 hours you were in there?

A. Nothing.

Q. Did they bring you anything to eat?

A. No, they tried to kill me with hunger.

Q. Did they give you anything to drink?

A. No, nothing.

Q. State if you had anything to eat or drink until you got out the next day?

Mr. CHENEY.—I object to that for the reason that it maybe that he didn't eat or drink anything, the question is, was it furnished; if he gets food it is his business whether he wants to eat it or not.

The COURT.—If you ask a man if he had anything to eat or drink you would naturally mean was there anything there for him to eat or drink.

Mr. COBB.—I will withdraw the question.

Q. State whether or not while you were in jail there, any food or drink was furnished you.

A. No; a man can go and get a drink himself, there is water in the jail, and he can get water—that is right.

Q. There is running water in there?

A. I cannot tell exactly if it is running water; I know I drank water in there.

Q. Was there any food furnished you?

A. Food was never furnished.

Mr. COBB.—You may cross-examine. [21]

(Testimony of Victor Van Ark.)

Cross-examination.

(By Mr. CHENEY.)

Q. Mr. Van Ark, you claim you have lived in Douglas since 1902? A. Yes.

Q. Now, in regard to this house where this trouble occurred with Mr. Shafer, I will ask you who had been living in that house? A. Ed. Hunsaker.

Q. How long had he been living in it?

A. Eight years.

Q. Eight years?

A. Yes, sir; maybe two or three months more or less, just about that length of time.

Q. And he is the same man that shot and killed himself, isn't he? A. Yes.

Q. He lived in that house for eight years, and you never lived there, did you—that wasn't the place where you lived?

A. That was not my place where I lived, but I own the property.

Q. I didn't ask you that; I ask you if you had ever lived in that house for eight years?

A. Oh, I lived maybe a month or two months in there.

Q. Where were you living when this thing happened? A. Up there (indicating).

Q. Up where?

A. On the other side of the hill, about maybe 100 yards up.

Q. That is what I want to find out; at the time this trouble occurred then with Mr. Shafer you were living in another house? A. Yes.

(Testimony of Victor Van Ark.)

Q. Up towards the hospital?

A. Yes; between the hospital and the beach road.

[22]

Q. You have lived there a long time, haven't you?

A. Yes.

Q. And this place where the trouble occurred had been rented to Hunsaker for eight years?

A. Yes.

Q. So after this man killed himself you say you went over to the Commissioner to see if you could not get the key? A. Yes.

Q. So that the place could be cleaned up?

A. Yes.

Q. Now, when you went to get into that place you said you went through the roof?

A. By the ceiling was a door, window, not for to go down; that was the next day, the Commissioner let me know I was to go in and clean up.

Q. You went through the roof then? A. Yes.

Q. So you didn't have any key for that place?

A. I cannot get any key from Mike O'Connor or from the marshal.

Q. You knew, Mr. Van Arx, that the place was in the keeping of the marshal, didn't you? You knew they had locked this place up?

A. That didn't look right to me, because the Commissioner told me to go in and clean out and I cannot believe that it was in charge of somebody else, because where the man shot himself I didn't think I had to ask to go in there.

Q. You said just now that you could not get the

(Testimony of Victor Van Ark.)

key from the marshal so you went through the hole up in the roof? A. That was the only way.

Q. Now, you claim, Mr. Van Ark, that you went over there and unlocked the door, when Mr. Hunsaker went to your house and [23] got you to unlock the door, and that you went inside of the house?

A. No, first I went down and the key would not open the door, and after I went home and got the other key we went in.

Q. Now, look here—if you had to go through the roof before that to get into that house, why didn't you use the key that you opened the house with then?

A. The door was locked with a snap lock on the inside, and I cannot open it at all on the outside, and I got another key and unlocked the door; they have got a snap lock and every time you snap the door the door is locked; after I got in and took the snap off for locking the door, then the door opened.

Q. So you got the key, and then—where did you get this key that you used the day you let those fellows in the house—did you get the key in the house?

A. No; I got the key at home, and took the key and fitted the key.

Q. When did you do that?

A. Altogether three days time, about three days; when I got the order of the Commissioner, and when the marshal come to make the trouble was about two days after, and I was cleaning out this place all right.

Q. What I am trying to find out, and what I want you to tell the jury is where you got that key—did you go through the roof and take the key from the

(Testimony of Victor Van Ark.)

inside of the house, of that lock, or did you make the key?

A. I didn't make the key, I bought it.

Q. After you went in through the roof that day, you bought a key, and so you had a key the day they came there? A. Yes. [24]

Q. Now, when Mr. Hunsaker came down to your house there, you were going to eat dinner, and he told you he had brought the marshal down to go into that house, didn't he?

A. Well, he told me that the marshal was going down with him.

Q. And you said that is all right, didn't you?

A. No; I told him never mind the marshal, because for six years he had been doing me all the dirty tricks he could do, and the marshal didn't get in my property if he didn't have the papers with him.

Q. I thought you stated that Hunsaker told you that he had brought the marshal down and you said all right? A. No, sir; I never told that.

Q. Well, then, I misunderstood you. Now, you claim that you went into the house and went into the kitchen with Hunsaker and Shafer.

A. No; I never claimed that.

Q. Did you say a moment ago when Mr. Cobb was asking you questions that you went in the kitchen, and after you had been in there a while that Mr. Shafer turned you out in the street?

A. I never told that.

Q. Were you inside of the house at all the day this trouble happened?

(Testimony of Victor Van Ark.)

A. You see I went back and opened the door and told Hunsaker, "Now, you come in," and I was in there in the kitchen.

Q. You were in the kitchen?

A. Yes, and I called Hunsaker to come, but Marshal Shafer pushed Hunsaker aside and tried to come first; that was the way, and when he come on my sidewalk I say, "You get out of here; you have got no business here."

Q. Now, this is what I want to get out—you were in the kitchen and Hunsaker was in the kitchen?

[25]

A. Hunsaker was in the doorway.

Q. You were in the kitchen?

A. I was there, yes.

Q. Then, when Mr. Shafer tried to get in, you were not in the doorway?

A. No, sir; I was in the door.

Q. Did Shafer get inside of the house?

A. Shafer come up on my sidewalk and pulled me out.

Q. Did he go inside of the house?

A. Inside of the house, sure; just in the corner of the door; he cannot come in because I was in the doorway.

Q. Shafer didn't go into the house.

A. No; that was my property.

Q. You were standing on the door-steps?

A. I was standing inside in the kitchen, and he come on my sidewalk and pulled me out.

Q. Now, you knocked Shafer down, didn't you?

(Testimony of Victor Van Ark.)

A. Was nothing else to do, if a man come and pull me out on the street and hit me.

Q. Did you knock Shafer down?

A. He knocked me first.

Q. He knocked you down?

A. No, because he cannot knock me down.

Q. Did you knock Shafer down in front of the door in the street? A. He fell down.

Q. And you were on top of him and some man pulled you off? A. He called for help.

Q. He called for help and Hunsaker and some other man pulled you off? A. Yes.

Q. Quite a number of people around there?

A. Yes. [26]

Q. Then as soon as they pulled you off Mr. Shafer jumped up and arrested you, didn't he?

A. Just so quick as he get up I cannot do anything more, and Shafer pulled out a revolver and put the revolver on my breast.

Q. You claim he pointed the gun at you?

A. Yes.

Q. And he arrested you and took you up to jail?

A. Yes.

Q. Now, you say that for eight years Mr. Shafer had been doing a great deal to you—what had he done to you—arrested you?

A. No, but he do me all tricks that he can do; one time we was up in court and there was a letter—I believe Mr. Cobb got the letter—making complaints, and it says I got three cabins that are pretty dirty—I cannot keep them clean because there is a man in

(Testimony of Victor Van Ark.)

there with lots of children and makes dirt—and they told me this must be cleaned—that it cannot go this way any more and it have to be cleaned; he asked me whose cabins they were, and I told him they belonged to Mike O'Connor. All right, the next day I cleaned the place; I have got no spectacles, and without spectacles I cannot see to read, and two times I go to Cheney about the trouble and he said they cannot hurt you. I cleaned the place up, and as I finished it was pretty warm weather, and I went down to Mike O'Connor's cabin, and he told me if I didn't see a paper, that he sent me a paper, and he would fine me \$100.

Q. Now, at that time Mr. Shafer was enforcing the orders of the health committee on the city council, and ordered you to clean up your dirty places?

A. No; they didn't make complaints—that is not true. [27]

Q. Complaints were made and then they told you to go and clean them up, and you did clean them up?

A. No; I told you the people go in there, and some people have got no right to say anything, and Marshal Shafer and Henson make out the paper and handed me the paper, but I got no spectacles and I cannot read.

Q. Those were your cabins—those dirty cabins?

A. No; they were not mine; they were O'Connor's.

Q. You claim they made you clean up somebody else's property?

A. Yes; I had to clean up for these people what was in O'Connor's cabins; another thing, in the win-

(Testimony of Victor Van Ark.)

ter time when the cold weather is, Marshal Shafer comes around on that man that was living in my cabin, and that man said, "What are you turning that way"—

The COURT.—Never mind, Mr. Van Arx.

Q. Ever since you have lived in Douglas you have had trouble with the city and the city authorities, haven't you, and you have been arrested and convicted on several occasions, haven't you?

A. I never had trouble with the city; the marshal he got trouble with me.

Q. As a matter of fact, haven't you been convicted of using dangerous weapons, or assault with a dangerous weapon in Douglas, before John Henson?

Mr. COBB.—I shall object to that as irrelevant and immaterial.

The COURT.—They may ask if he has been convicted of a crime.

Mr. COBB.—Not a mere misdemeanor.

The COURT.—Any crime.

Mr. COBB.—All right.

Q. You were arrested and convicted for assault with a dangerous [28] weapon, weren't you? Just answer the question, and you can explain it later to Mr. Cobb; you were convicted in the municipal court in Douglas for assault with a revolver, with a dangerous weapon?

A. I was convicted, and you promised me for twenty dollars to defend me, but I know I have to come to Juneau a half a dozen times, and Mr. Cobb—

Q. You can explain that, Mr. Van Arx, if you want

(Testimony of Victor Van Ark.)

to to Mr. Cobb. Now, the time you were convicted for assault with a dangerous weapon, Mr. Shafer was in Douglas at that time and was city marshal, wasn't he? A. Yes.

Q. Mr. Henson was the Judge? A. Yes.

Q. Now, in addition to that you had trouble with the mayor of the city, and with all of the city council?

A. I never talked with the mayor.

Q. When O'Connor was mayor, didn't you have trouble with him about your property down on the beach?

A. He was down on the beach, and I asked him, I said, "Are you going to take my water away from here? I got a right to use the water in the toilet, and you got no right to go and take the water away." I believe that is right.

Q. Now, Mr. Van Ark, at the time you were arrested there, the time you knocked the marshal down, just before you knocked him down didn't you use vile and obscene language, or words to this effect—

Mr. COBB.—I object to that as not cross-examination, and part of their defense.

The COURT.—Objection overruled, because this is part of the things that you brought out.

Q. I used rough language like he did; I did it too.

[29]

Q. Isn't it a fact that you called Marshal Shafer a God damned son-of-a-bitch?

A. Well, I called him just what he called me back; I called him back what he called me; yes, sir.

(Testimony of Victor Van Ark.)

Q. You did call him that, didn't you?

A. I cannot tell you now, 14 months, exactly what I did call him, but I called him the names he called me; I called him the names he called me, yes.

Q. You told Mr. Shafer also to go down and take care of his sporting women, didn't you, of his whores?

A. I told him, "You go down to the sporting girls, that is all the work what you do; you don't do any work for the city, only the sporting girls."

Q. Now, immediately after you used that language Mr. Shafer arrested you, didn't he—right after that Mr. Shafer arrested you and took you to jail?

A. Mr. Shafer don't arrest me—he pulled me out of the door, and these people keep me back; he arrested me afterwards.

Q. You claim that he rushed in and went into the house and pulled you out of your house?

A. He pulled me out.

Q. Pulled you out of this house?

A. Yes; he say pretty things—"We were all the time good friends, and what is the matter with you," and just as soon as he got near he pulled me out.

Q. Mr. Van Arx, when you were put in jail there, as a matter of fact you were locked up the same as any other person and put into a separate cell by yourself at night, weren't you?

A. I wasn't locked up.

Q. You were put in a cell there where there was a bed, and you had a bunk or bed? [30]

A. Yes; that is right.

(Testimony of Victor Van Ark.)

Q. And Mr. Shafer brought you some food, didn't he? A. No; he didn't bring me nothing.

Q. There was a pipe in the corridor of that jail, a water-pipe with running water right there in the corridor that you could help yourself to, wasn't there? A. The water was in there.

Q. There was running water in there, and you drank water, didn't you?

A. Yes, that is right; I drank water.

Q. Did you ask Mr. Shafer to bring you anything to eat?

A. No; I didn't ask him; he come in the evening and brought a bucket full of eats and give to the crazy man, and give him feeds, and he told him, "I got your feed."

Q. He brought in food for the other man and didn't bring you anything?

A. Didn't give me nothing; didn't give me anything.

Q. You didn't ask for anything?

A. Oh, no; oh, no.

Q. You claim it was 1 o'clock the next day before he took you into court? A. I cannot tell exactly.

Q. Tell the jury when it was as near as you can?

A. As near as I can tell, he took me there at 10 o'clock in the court.

Q. Why did you say a few moments ago, then, they kept you in that jail until 1 o'clock the next day?

A. He put me back, because I go over there to Mr. Henson, and Mr. Cobb wasn't there, and I said Mr. Cobb will come over on the 11 o'clock boat, and they

(Testimony of Victor Van Ark.)

put me in jail again, and at [31] 1 o'clock Mr. Cobb was there, and I don't know exactly when Mr. Cobb came over there, and Marshal Shafer and I go out after this time.

Q. Then, Mr. Van Arx, it is a fact that you were put in jail sometime in the afternoon one day, and that you were kept there that night, and that you were taken into court the next morning at 10 o'clock, before Mr. Henson?

A. They brought me over there.

Q. You said, didn't you, that they brought you over there before me Mr. Henson? A. Yes.

Q. And you asked that the case be put off because you wanted to get a lawyer from Juneau?

A. Oh, he come all right.

Q. Mr. Cobb wasn't there, was he?

A. He was over there.

Q. He wasn't there, was he, at 10 o'clock?

A. No.

Q. Now, isn't it a fact that you asked for your case to be put off until your lawyer could come from Juneau, and then Mr. Henson put you back in jail, or Mr. Shafer did? A. Yes.

Q. When you got through with that fight with Shafer, Shafer looked pretty bad, didn't he—his clothes were all dirty, and he was scratched up somewhat, wasn't he? A. He never looked good to me.

Q. So you don't now, Mr. Van Arx, make any complaint particularly about the jail being dirty—what you claim now is there was another man in there that had fits, as I understand? A. Yes. [32]

(Testimony of Victor Van Ark.)

Q. This man didn't hurt you any, did he?

A. He didn't hurt me, but I think it was a careless thing for the city marshal and the city court that the man didn't get locked up when he is crazy.

Q. That is just your opinion about his condition, whether this man was crazy or not?

A. Well, I believe he was.

Q. That was your opinion? A. Yes.

Q. Now, Mr. Van Arx, I will ask you if you, at any time after you were arrested in the afternoon, offered to give bail?

A. No, put me in jail and don't look at me and don't bring me nothing to eat, how would I get a chance to get bail or pay anything?

Q. When Mr. Shafer came to the jail any time there in the afternoon with the food, did you ask him then to give bail, or did you ask him for a chance to get bail?

A. It was 5 o'clock before Shafer was here, and Henson was pretty glad knowing that they have got me in there, and said now we have got the bird there he don't get any bail, I know that.

Q. How do you know that?

A. Because when a man here asks for bail for me they don't let him have any.

Q. So that is the reason why you say now that you know that Mr. Henson and Mr. Shafer, said, "Now, we have got the bird, we are going to keep him in there"? A. Yes, sir.

Q. Did you ask Mr. Shafer to get bail, or did you offer to give any bail that afternoon?

(Testimony of Victor Van Ark.)

A. He don't talk to me, and I haven't got nothing to do with him, but I asked him to bring me into court, and he didn't talk. [33]

Q. When did you ask him that?

A. Just when he put me in jail; I says, "Here is Mr. Henson in the doorway," and he took the club out, and he said come on to jail, and right away he put me in jail.

Q. What did you say to Mr. Shafer about that, about taking you into court—did you ask him to take you particularly to Henson's court? A. Yes.

Q. Where did you ask him that?

A. As he go with me right along.

Q. On the street?

A. Yes; the jail is before Henson's building, and Henson was in the doorway.

Q. The jail is down between the sawmill and Henson's office, isn't it? A. Yes.

Q. On the beach? A. Yes.

Q. And in going from the beach down below the sawmill and going up town, you come to the jail first, before you come to Henson's office? A. Yes.

Q. Henson's office is up in the block across from the postoffice? A. Yes, maybe 50 yards away.

Q. Now, then, Mr. Hunsaker had lived there in that house for eight years before he killed himself—had he come to you and given the place up, or said anything to you about he was going to kill himself?

A. No; he didn't say nothing.

Q. He rented the house there and lived in it for eight years?

(Testimony of Victor Van Ark.)

A. Yes, and he was owing about three months' rent.

Q. You understood at that time, Mr. Van Ark, that Mr. Ed Hunsaker— [34] that is, the brother that was over there to see you—you understood he was the administrator of his brother's estate, didn't you?

A. I couldn't say, no; the commissioner don't tell me nothing.

Q. Mr. Hunsaker told you he had charge of his brother's estate, didn't he? A. No, sir.

Q. And he had brought the marshal down to get the stuff? A. No, sir.

Q. What did he tell you when he came over to your house that day?

A. He come and told me the marshal was here for sizing up the effects.

Q. He told you the marshal was there to size up the effects? A. Yes.

Q. And didn't he say that he was administrator of his brother's estate and he wanted to get into the house for that purpose?

A. No, he don't tell me nothing.

Q. Where is Mr. Hunsaker now?

A. Up in Auk Bay, I heard; I heard somebody was gone for him; I don't know.

Q. Out at Auk Bay? A. Yes.

Q. So you claim, Mr. Van Ark, that when you struck Mr. Shafer he was standing just outside of the door and you were in the house—is that right—where were you when you struck Shafer, weren't you on the street?

(Testimony of Victor Van Ark.)

A. He pulled me out on the street, yes; he pulled me out of the kitchen out on the street.

Q. When you say the kitchen do you mean the first room in the house? [35] A. Yes; the first room.

Q. You say there was quite a crowd of people there when that happened? A. There was.

Q. When you appeared in court the next morning, Judge Henson was there, wasn't he? A. Yes.

Q. And you were brought in there, and isn't it a fact that he was going to go ahead with your case, and that you said you wanted a continuance, that you wanted your case put off—isn't that true?

A. He brought me over there after 10 o'clock, and I don't want to go ahead, and I told him on the 11 o'clock boat comes Mr. Cobb, and I don't want my case to come up until he come. Well, all right, he said, at 1 o'clock, and he put me back in the jail, the marshal put me back.

Mr. CHENEY.—That is all.

Redirect Examination.

(By Mr. COBB.)

Q. When was it the complaint was made against you for assault with a deadly weapon?

A. It is about three or four years ago, I cannot tell; it was a long time ago.

Q. And you say Mr. Cheney defended you on that occasion?

A. I explained to Mr. Cheney—you weren't home—I explained to Mr. Cheney, and Mr. Cheney said they cannot hurt you, if a man stay in your door and want to lick you; I told him to go away three

(Testimony of Victor Van Ark.)

times, and he didn't go, and I took the revolver and told him you got to go.

Q. You were convicted for that before Mr. Henson?

A. Yes; you were not here, and I went to Cheney and I know when [36] a man has a little business in Juneau he has to spend two or three days in Juneau, and Cheney tell me I better pay the \$20, and let it go.

Q. That is, you say, four years ago, and you paid the \$20 fine? A. Yes.

Q. Is that the only time Mr. Henson ever had you brought before him over there?

A. Never nothing else at all.

Q. You were never brought before him at any other time? A. Nothing else at all.

Mr. COBB.—That is all.

Recross-examination.

(By Mr. CHENEY.)

Q. I didn't appear for you in that case, Mr. Van Ark—you say I told you it was cheaper to pay the fine rather than hire a lawyer in Juneau to go over there, and you paid your fine, isn't that right?

A. Yes, that is right.

Q. I didn't go over to Douglas and defend you, did I? A. No.

Q. I told you it was cheaper to go over there and pay your fine?

A. No, you didn't tell me that; I would take this paper and go to Mr. Cobb if he was at home.

Q. What do you mean then that I told you?

(Testimony of Victor Van Ark.)

A. I don't understand; the only thing, it could be made to see if you are in your house in there and a man come to the door and tried to lick you, you have got a right to take a revolver and tell him you have got to go, and I have got a witness here and I can bring the witness.

Q. That is all right, I didn't remember it—when you came to [37] see me you came to my office in Juneau? A. Yes.

Q. And you told me about the case?

A. About how it happened.

Q. You didn't hire me to go over there, and I didn't go over there? A. No; you didn't.

Mr. CHENEY.—That's all.

(Witness excused.)

(Whereupon court adjourned until 1:30 o'clock P. M.) [38]

AFTERNOON SESSION—October 23, 1915,
1:30 P. M.

Testimony of Jas. L. Manning, for Plaintiff.

JAS. L. MANNING, a witness introduced on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Direct Examination.

(By Mr. COBB.)

Q. State your name. A. James L. Manning.

Q. What is your occupation?

A. United States Deputy Marshal.

Q. As such a United States Deputy Marshal was

(Testimony of Jas. L. Manning.)

a subpoena placed in your hands for Mr. Hunsaker?

A. Yes, sir.

Q. Did you make every effort to find him?

A. Yes, sir; I did.

Q. Could you find him?

A. I could not find him, no.

Q. Just state what efforts you made?

A. In detail?

Q. In a general way.

A. I inquired around town for this gentleman, and I was told by Charles Rudy out at Mendenhal that he thought he was out at Auk Bay somewhere on the beach; I came back and told Mr. Cobb, and Mr. Cobb told me I would have to go out, and I made arrangements with George Nelson to take me out on his motor cycle, and we went out as far as we could, out beyond Knudson's; we got out there about 4 o'clock in the afternoon, and I took the trail through the woods and went around Auk [39] Bay, and I think I covered the beach in the vicinity of Auk Bay about 7 miles; I was out there from about 5 o'clock in the evening until 11 o'clock at night, and George Nelson and I fired a number of shots from revolvers, and hollered, and we visited every cabin along the beach, and we couldn't find anyone home anywhere.

Mr. CHENEY.—I don't know the purpose of this.

Q. You made every reasonable effort?

A. I made every effort, yes.

Mr. CHENEY.—What is the purpose of this?

Mr. COBB.—It is simply an answer to your question here to the plaintiff, where Mr. Hunsaker is.

(Witness excused.) [40]

Testimony of John Fuesi, for Plaintiff.

JOHN FUESI, a witness introduced in behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Direct Examination.

(By Mr. COBB.)

Q. State your name? A. John Fuesi.

Q. Where do you live? A. In Douglas.

Q. How long have you lived there?

A. Seventeen years, a little over.

Q. What is your business? A. Hardware.

Q. You ran a mercantile establishment over there?

A. Yes, sir.

Q. Do you know the plaintiff, Victor Van Arx?

A. Yes, sir.

Q. Do you know the defendant, John Henson and W. A. Shafer? A. Yes, sir.

Q. Do you remember the occasion of the arrest of Victor Van Arx by Mr. Shafer in September, 1914?

A. Yes, sir.

Q. Mr. Fuesi state to the jury about how long after the arrest before you heard of it.

A. Two or three hours afterwards.

Q. You don't know just how long it was?

A. No, I couldn't state exactly the hour.

Q. The same day?

A. The same afternoon; Theodore Hunsaker came into my place and said— [41]

Mr. CHENEY.—I object to that.

Q. Never mind what Mr. Hunsaker said. What,

(Testimony of John Fuesi.)

if anything, did you do then in regard to it?

A. I told Theodore to go and tell Mr. Henson—

Mr. CHENEY.—I object to the conversation between him and Mr. Henson.

The COURT.—Don't tell anything about what was said.

Q. State what you did.

A. I told him I would like to get a bond for him to get him out and told him—

Mr. CHENEY.—I object to the conversation between him and Henson.

The COURT.—That may be stricken. You were asked what you did, not what you said—what did you do?

A. Well, what I did, Theodore came back again and said, "I couldn't get no answer"; I said, "All right." He said, "Mr. Henson is on the outside there," and I went outside there and said, "Why, Mr. Henson, Theodore and I will go good for this man."

Q. Is that the city magistrate, Mr. Henson?

A. Yes, sir.

Q. What did you say to Mr. Henson when you went to him?

Mr. CHENEY.—I want counsel to state first the time and place that this occurred so we are to know what we are to meet.

The COURT.—Very well, you may cross-examine him on that.

Q. What did you say to Mr. Henson when you went to him with Hunsaker?

(Testimony of John Fuesi.)

A. I says: "I like"—

The COURT.—Fix the time and place, Mr. Cobb.

Q. When was it that you went to see Mr. Henson?

A. It was in the afternoon.

Q. Of the day of the arrest?

A. Yes, sir. [42]

Q. Can you fix the exact hour?

A. No, sir; I cannot.

Q. You went to him as soon as you heard it?

A. Yes, sir.

Mr. CHENEY.—I object to that; that is counsel's own conclusion.

The COURT.—Yes, don't lead the witness.

Q. When you went to see him where did you find Mr. Henson?

A. In front of the jewelry store of Al Bloedhorn.

Q. In Douglas City, Alaska? A. Yes, sir.

Q. Now, what occurred when you got there—just state as near as you can recall everything that was said?

A. I said, "Theodore and I, we go good for this Van Arx, let him out, let him go home"; and he said, "Nothing doing until to-morrow at 10 o'clock." That was all that was said, and I went back to the shop and went to work again.

Q. State to the jury whether or not you and Mr. Theodore Hunsaker were prepared to furnish any reasonable amount of bail that might be required?

Mr. CHENEY.—I object to that because the witness didn't state what he said—that is, he said, "We go good for this Van Arx"; now, that is all the wit-

(Testimony of John Fuesi.)

ness claims, and whether or not they had a certain amount of real estate, or whether they had personal property, or whether they did not; whether they could justify on a bond for any amount, it seems to me as immaterial; that is a question that has to be decided in court when the bond is taken. I suppose his only object is to show that somebody offered to go this man's bail, and when he has reached that point it seems to me that going into the question of how much money Mr. Fuesi has is immaterial, especially in view of the fact that Mr. Henson did not say [43] that he would not release Mr. Van Arx because they were not sufficient for bail.

Q. You can answer the question, whether you were prepared to go to give any reasonable amount of bail? A. Yes, sir.

Q. Where is Mr. Theodore Hunsaker?

A. He is dead.

Q. He has died since then? A. Yes.

Q. Was Mr. Hunsaker a man of property over there? A. Yes.

Q. And so are you? A. Yes, sir.

Mr. COBB.—You may cross-examine.

Cross-examination.

(By Mr. CHENEY.)

Q. What Hunsaker are you talking about?

A. Theodore Hunsaker, the man who died here a few months ago.

Q. The brother of the man who shot himself?

A. Oh, no; no.

Q. The other Theodore Hunsaker, the little, short

(Testimony of John Fuesi.)

fellow? A. Yes, the little, short fellow.

Q. Now, state again, Mr. Fuesi, just what you said to Mr. Henson? Just state the words you used to Mr. Henson?

A. Well, I said to Mr. Henson to let Victor out and let him go home, and that we would go good for him, the same as we go bail for him.

Q. You would go good for him? A. Yes.

Q. That is all you said? A. Yes. [44]

Q. And he said nothing doing? A. Yes.

Q. And you went back to the store again?

A. I went back to work again.

Q. Do you say Theodore was there with you and Mr. Henson at the time? A. Yes, sir.

Q. On the sidewalk? A. Yes, sir.

Q. That was not in Mr. Henson's office in the courthouse? A. No.

Q. You didn't go up there?

A. No, just in front of the jewelry store of Al Bloedhorn.

Q. Right on the street? A. Yes.

Q. What other conversation did you have with Mr. Henson?

A. I didn't have no other conversation.

Q. Didn't you abuse Mr. Henson at this time and tell him that he had no right to arrest this man, and no right to put him in jail, or words to that effect?

A. Not to my recollection.

Q. As a matter of fact Mr. Fuesi, isn't this true, that you met Mr. Henson when he was going from the restaurant after having his dinner, you met him

(Testimony of John Fuesi.)

on the street and you said to Mr. Henson: "You got no right to arrest Van Arx, you got no right to put him in jail?"

A. I don't remember of anything I said like that.

Q. You simply said what you claim now that you said, that you would go good for Van Arx?

A. Yes, sir.

Q. And Mr. Henson and you have not been very friendly for a [45] number of years, have you?

A. I don't know; we talked together the same as anybody else doing business together.

Q. You haven't had any unfriendly feeling toward him and Mr. Shafer? A. Not to my knowledge.

Q. You and Van Arx are pretty good friends, aren't you? A. Yes, sir.

Q. Both Swiss nationality? A. Yes, sir.

Q. Talk the same language? A. Yes, sir.

Mr. CHENEY.—That is all.

Mr. CHENEY.—Just another question: You didn't state the time this conversation occurred, did you?

A. No, I cannot state the time, it was in the afternoon.

Q. Sometime in the afternoon? A. Yes, sir.

Q. Would you say about 5 o'clock?

A. Somewheres around there, I suppose.

Mr. CHENEY.—That is all.

Redirect Examination.

(By Mr. COBB.)

Q. You went as soon as you heard of the arrest,

(Testimony of John Fuesi.)

did you—you went to Mr. Henson as soon as you heard of the arrest?

A. I went to Mr. Henson; when Theodore could not get no answer from him, I went to him.

Mr. CHENEY.—He insists on getting that in, your Honor; you have ruled it out once.

The COURT.—Yes; that will be stricken, Gentlemen of the Jury. [46]

Q. Did you go to see Mr. Henson as soon as you heard of the arrest?

A. I think it was at that time.

The COURT.—About 5 o'clock, you say?

A. Somewheres around there.

Mr. COBB.—That's all.

(Witness excused.)

PLAINTIFF RESTS. [47]

Mr. CHENEY.—If the Court, please at this time I move for a nonsuit on the ground that plaintiff has failed to substantiate the allegations in the complaint. This suit is based upon a conspiracy between Henson and Shafer, and states that they conspired together to commit these unlawful acts, and that they put this man in jail without food or water, and that the jail was dirty, and they allege all these various things as a basis for an action of damages. Their own evidence does not show—and Mr. Van Arx himself does not swear that the jail was dirty, and there is no evidence at all of any conspiracy. Certainly so far as Judge Henson is concerned the plaintiff has failed to make out a case. It seems to me at this time if there is any case at all, it could only be

against Mr. Shaefer, because Mr. Henson is not connected in any way with this arrest, not connected with the jail in question nor with the parties, and there has been no conspiracy shown between him and Shafer.

The COURT.—What have you to say to that, Mr. Cobb?

Mr. COBB.—I have to say: Here is a man arrested between 11 and 12 o'clock without a warrant—

The COURT.—Address yourself to the case against Mr. Henson—what is there to hold Mr. Henson?

(Argument by Mr. Cobb.)

The COURT.—The case so far as Mr. Henson is concerned will be dismissed.

Mr. COBB.—To which we except.

The COURT.—The motion for a nonsuit as to Mr. Shafer will be denied. [48]

DEFENSE.

Testimony of William Fells, for Defendant.

WILLIAM FELLS, a witness introduced on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Direct Examination.

(By Mr. CHENEY.)

Q. Mr. Fells, what position, if any, did you hold in September, 1914?

A. Deputy United States Marshal in Douglas.

Q. Are you acquainted with the premises Mr. Hunsaker occupied before he killed himself last fall, in

(Testimony of William Fells.)

September? A. I am.

Q. Do you know the place where he lived?

A. I do.

Q. Were you present at a coroner's inquest upon the body of this man Hunsaker—I don't know his first name—do you know his first name? A. Ed.

Q. Ed. Hunsaker—at this place about the 8th of September, 1914? A. I was.

Q. What, if anything did you have to do with those premises, with reference to whether or not you were put in charge of them?

A. I was; I had the bodies moved, and I locked the place up by order of the Commissioner.

Q. Did the Commissioner hold an inquest over at the house? A. In the house.

Q. Were you present? A. I was.

Q. Was Mr. Shafer, the defendant in this case, present, A. He was. [49]

Q. Now, state whether or not you took any action in regard to turning these premises over to Mr. Shafer afterwards, Mr. Fells?

A. This inquest was held at 2 in the morning, or 1:20, or something like that, and the Commissioner ordered me to have the body removed to the morgue and lock the place up. The door has a storm door on it, and the only way I could find to lock up that storm door was with a padlock; I couldn't find any key, so I snapped on the lock and let it go at that, and I said if we have to get in here we can unscrew the hasp. The next morning I met Mr. Shafer and told him that if Hunsaker was up to go down there and

(Testimony of William Fells.)

open that door for him, that I had to come over here to attend court.

Q. Who was the Hunsaker you mentioned when you said that to him?

A. Theodore; I think the one with the blind eye—I don't know what his name is—Theodore, I think?

Q. That is the brother of the dead man?

A. The brother of the dead man.

Q. You told Shafer if he showed up—

Mr. COBB.—I object to him leading the witness.

The COURT.—Change the form.

Q. Just state again what you said?

A. I told Mr. Shafer to go down with Mr. Hunsaker and get in the house.

Q. What was the reason for that, if you were in Douglas?

Mr. COBB.—We object to that as immaterial, what his reasons were.

The COURT.—The object of it is simply that Mr. Shafer was not a trespasser on the property—objection overruled.

Q. What were you doing at that time—what reason did you have?

A. Why, I was attending the court. [50]

Q. You were attending court here in Juneau?

A. I was.

Q. Obligated to be here every day?

A. Every day.

Q. Mr. Fells, you were in the house at the time of the inquest? A. I was.

Q. Were any effects in the house—any personal

(Testimony of William Fells.)

property of any kind that Mr. Hunsaker left there?

A. Yes, everything seemed to be standing around there—sewing machine, mirrors, beds, table and everything else.

Q. Did Mr. Van Arx ever go to you and ask you for the key to that place? A. He did not.

Mr. CHENEY.—That is all.

Cross-examination.

(By Mr. COBB.)

Q. What did you do with the key?

A. There was no key; I never had a key.

Q. Never had a key at all—all you said to Mr. Shafer was to take that hasp off and let him in if he wanted to get in? A. That is all.

Q. And that is all the turning over that you did?

A. That is all.

Mr. COBB.—That's all.

Mr. CHENEY.—That's all.

(Witness excused.) [51]

Testimony of W. A. Shafer, for Defendant.

W. A. Shafer, the defendant, introduced as a witness in his own behalf, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Direct Examination.

(By Mr. CHENEY.)

Q. State your name.

A. W. A. Shafer.

Q. Do you reside in Douglas? A. Yes, sir.

Q. How long have you lived in Douglas, Mr.

(Testimony of W. A. Shafer.)

Shafer? A. Since '98, off and on.

Q. What position, if any, did you occupy in September, 1914? A. I was city marshal.

Q. How long have you been city marshal over there, about? A. Since 1910.

Q. Are you still the city marshal? A. Yes, sir.

Q. Do you know Mr. Van Arx? A. I do.

Q. You have heard Mr. Van Arx's testimony here this forenoon? A. I did; yes, sir.

Q. Now, Mr. Shafer, I will ask you to state what you did in regard to arresting Mr. Van Arx, on, I think it was the 12th day of September, 1914.

A. The 11th of September.

Q. State first what, if anything, you had to do with the place or premises there—who lived there, and then what occurred afterwards, leading up to this affair?

A. Well, this place, Ed. Hunsaker lived there, and he committed suicide there, and I was there with the United States Marshal; [52] I was ordered to go down there with them, as they went to arrest the man. The door was open—

Q. Just explain to the jury about that—you were ordered to arrest the man—was that before he died, suicided? A. Yes, sir.

Q. What had he done?

A. He had killed a man and a woman.

Mr. COBB.—I object to that as incompetent, irrelevant and immaterial.

The COURT.—It is immaterial except that it is preliminary, just simply to show what the man was doing there.

(Testimony of W. A. Shafer.)

Q. In the first place, where did this man that killed himself live?

A. He lived on the beach, next to Michael George's store, next door.

Q. On that street running from Douglas to Treadwell on the beach? A. Yes.

Q. Just state how this house is situated with reference to this street—whether or not there was any sidewalk in front of it.

A. Yes, sir; in going south it was on the left-hand side of the street, and there is a 6-foot sidewalk running past the house.

Q. That is the street, isn't it?

A. Yes; that is the street; that is all the street there is.

Q. I am asking you now if there is any such sidewalk in front of the house?

A. Yes, there was; there was a small sidewalk clear to the house.

Q. Did or did not the house stand flush with the street?

A. As near as any of the rest of the houses; they all come out [53] on this one street right down there.

Q. Now, you may state what occurred there—what Mr. Hunsaker had done, and what you did, briefly?

A. After the United States Marshal and I stepped into the house, Mr. Hunsaker fired a shot, and as we jumped into the back room we saw him lying on the floor, and I said to Billy Fells, "He has shot himself." We called the jury and the Coroner back—

(Testimony of W. A. Shafer.)

self." We called the jury and the Coroner back—we had examined those other cases, and we called them back, and I was the only witness examined on that case.

Q. What other cases do you mean?

Mr. COBB.—I think that is all incompetent, irrelevant and immaterial—that is what occurred on the 8th of September.

The COURT.—I don't think, Mr. Cheney, it need be gone into in detail.

Q. Now, after this coroner's inquest—you were present at the coroner's inquest, you say?

A. Yes; I was the only witness examined.

Q. What happened, if anything, between you and the marshal and the coroner, after the inquest?

A. Mr. Fells locked the house afterwards he told me to go and unlock it for the administrator of Hunsacker's estate, that was Ed Hunsaker's brother—he told me to go and unlock it for him.

Q. Was there anything in there belonging to the man who killed himself?

A. Yes; he left letters and certain articles showing what belonged to him and it seemed like Mr. Van Arx had some things in there as well as Hunsaker; I won't say what day it was, but it was after this happened, Hunsaker he spoke to me and he said he would like to get the key to unlock that house, and I says to him— [54]

Mr. COBB.—I object to that, what he said.

The COURT.—He says that Hunsaker and he went down there to look after the effects of the dead

(Testimony of W. A. Shafer.)

man, or take charge of them; that is the only material part of the case; the only material thing to you is to show that he was lawfully there.

Q. Well, Mr. Shafer, who called you to go down there?

A. Mr. Hunsaker called me from O'Connor's store.

Q. By 'phone? A. Yes, sir.

Q. Where were you at the time?

A. I was at home at dinner.

Q. Had you had your dinner?

A. No, sir; I went home to dinner after 12 o'clock, and he called me up; I says, "Where are you now?" He says, "I am in O'Connor's store;" and he asked me when I was going to come down, and I said, "Right away;" I went down to Mr. O'Connor's store and met him there, and we walked to the beach together; when we got down to the house he said, "I would like to have Jim Mitchell and Van Arx there," and I didn't object, and I waited there for 10 or 15 minutes until he came back, and he said he couldn't find Jim Mitchell, and that Van Arx was eating dinner and that we would have to wait about 10 minutes. We waited there and Van Arx came down and he started to unlock the shed door—not the one that was locked by the marshal, but the back door—and it seemed as though he didn't have keys that would unlock it and he started home, and when he started he said to me, "You needn't to stay around here, you can't get in"—I hate to repeat the dirty words he said before the lady, but I have to.

(Testimony of W. A. Shafer.)

The COURT.—Who are you talking about now?

[55]

A. Van Arx. Van Arx said, "You old whore-master, you go down to the other end of the town where you belong and attend to the whores"; those are the words he used. He went to his house to get the key and came back and unlocked the door; I walked up close to him just before he went in, and he said, "You cannot come in here," and I says, "What is the matter?" He said, "What is the matter? Any son-of-a-bitch of a thing that O'Connor wants done you are son-of-a-bitch enough to do it"; and we had a mix-up and I went on the under side.

Q. What do you mean by that?

A. He assaulted me; I grabbed hold of him with the intent to arrest him, and we were pretty busy, and finally we went down, he on top, and Hunsaker and Frank Dean pulled him off.

Q. Was there anybody around there?

A. Yes, sir; lots of people around.

Q. Where did this occur?

A. Right in front of the house, right on the sidewalk. And I says to him when I got up, I said, "Old man, you can go along with me." He says, "I don't have to"; and I says, "You old reprobate, you are under arrest, do you understand that?" I pulled my gun, not pointing it at him at all, and I put my hand with the gun down like this (indicating), but I pulled the gun to enforce my words; I had to shove him about 10 or 12 feet before he would walk, and I put my gun in my pocket and

(Testimony of W. A. Shafer.)

pulled my club and carried it in my hand all the way to the jail, and I arrested him. That was pretty close to 1 o'clock. Of course, I was pretty dirty; my clothes were dirty—I had been on my back and the street was wet and they were dirty, and I went home and changed my clothes and took them to the cleaner. [56]

Q. What part of town do you live in?

A. I live on Third street, out towards the cemetery.

Q. In the north part of Douglas?

A. In the north part of town.

Q. And you went out home to your dinner?

A. I did; I took those clothes to the cleaners, and afterwards I was looking after witnesses up to close to 4 o'clock, and I went to Mr. Henson to make out the complaint and he wasn't in the office at the time; I believe Mr. Henson was sick or something of the kind, but he was not in.

Q. Well, then, Mr. Van Arx, of course, was in jail at that time?

A. Yes, sir; he was in jail.

Q. Now, when did you take him before the Court?

A. I took him before the Court at 10 o'clock the next morning. That was our usual hour to hold court. And as far as the grub is concerned, I took him a bucket of grub from the Jap restaurant, and set it in his cell; there was piece of pie, two sandwiches and a cup of coffee, and I said, "There is your supper." The next morning I went in there, and was going to get him another meal; but the

(Testimony of W. A. Shafer.)

bucket was just as I had left it the night before; it was heavy, and I looked in it, and I seen it was the same as it was the night before, and I left it there in the cell. At 10 o'clock I took him to the Judge, and he said he didn't want to try the case then, that he had a lawyer coming at 11 o'clock. I put him in jail again, didn't lock him in as I did the night before, but put him in the corridor so he could have access to the water and toilet, and after that I went to the beach again to get some more witnesses.

Q. Were these witnesses people who were there at the time?

A. They were; I remember of seeing them standing around, and I [57] wanted to try to find them.

Q. You say Mr. Van Arx himself said he didn't want to try the case in the morning?

A. He did; at 10 o'clock he said he didn't want to try it—he didn't ask for no delay or anything of that kind—he said his lawyer was coming over on the 11 o'clock boat.

Q. Mr. Shafer, I will ask you if Mr. Van Arx asked for bail, or asked for permission to give bail, at any time from the time he was arrested up to 10 o'clock in the morning? A. No, sir.

Q. I believe you said he was locked in a cell?

A. He was; I locked him in the cell.

Q. You heard him say he was in there with a crazy man?

A. When he went back he was in the jail with another man.

Q. That was in the morning, but the day before

(Testimony of W. A. Shafer.)

he said he was in that room with a crazy man?

A. No, sir; he was locked in a cell all night.

Q. When you took him back in the morning you say you left him in the corridor?

A. I did; yes.

Q. What condition is that jail in, in regard to being clean or dirty?

A. I will swear it was cleaner than his house when I saw it; I will swear the jail is kept in better condition than his house was when I saw it.

Q. Now, just tell the jury where that jail is located with reference to the place where you arrested Van Arx and the place where Mr. Henson had his office on Main Street in Douglas?

A. From Van Arx's place the jail is pretty close to a half mile this side of Van Arx's place; and it is about 120 feet or something of that kind, to Henson office, on this side of the [58] jail; I didn't pass his office at all in going to the jail.

Q. Then, as I understand, Mr. Shafer, in going up from the beach where this trouble occurred you get to the jail first? A. Yes, sir.

Q. Is the jail right on the street?

A. Yes, right on the street.

Q. And you keep right on going north to the main street of Douglas before you get to Mr. Henson's office? A. Yes, sir; that is right.

Q. I will ask you whether or not Mr. Van Arx stopped somewhere along in front of the bank as you were bringing him up to jail and told you there is Mr. Henson standing there in the door, and for you

(Testimony of W. A. Shafer.)

to take him over there?

A. No, sir; he didn't; he never said those words to me at all; in fact, he wouldn't speak on the way down town at all.

Q. Which way did you come up—did you come up from the armory or come up by the sawmill?

A. By the armory.

Q. And down to the grandstand where the ball ground is? A. Yes, sir.

Q. And when you got in front of the jail you crossed over to the jail? A. Yes, sir; I did.

Q. Mr. Shafer, had you said anything to Mr. Henson about going down on the beach to see Mr. Van Arx, or arresting Mr. Van Arx?

A. No, sir; you see, Mr. Henson didn't know I went down to the beach.

Q. Now, you say when you went to Mr. Henson's office in the afternoon he was not in?

A. Yes, sir; that is what I said.

Q. What hours does he usually keep there? [59]

A. I don't know whether it was 8 to 5 or 9 to 5, which; I think it was 9 to 5, if I am not mistaken; I am not positive, but I know he holds court at 10 o'clock.

Q. Was that the custom of Judge Henson to hold court in the morning? A. Yes, sir.

Q. All the time that you have been there?

A. Yes, sir; all the time that I have been on the job.

Q. Had you struck Mr. Van Arx or had you drawn any weapon upon Mr. Van Arx—

(Testimony of W. A. Shafer.)

Mr. COBB.—I object to counsel leading the witness constantly—it is not only leading but argumentative, and I object to it.

The COURT.—Change the form of it.

Q. Mr. Shafer, when did you draw your revolver?

A. After he had said those dirty words that he said I arrested him; just after I got up off the ground I says, “Old man, you are under arrest—come,” I said, “Old man, you can come along with me”; he said, “I don’t have to”; I said, “You old reprobate, you are under arrest.”

Q. That is after you got up?

A. Yes, that is the time I pulled the gun.

Q. Did you believe you had the authority to arrest Mr. Van Arx at that time?

Mr. COBB.—I object to that.

The WITNESS.—He was interfering with my business, that is what he was.

Mr. COBB.—I object to that; I don’t think a witness is allowed to testify of his belief in a thing; he can state what was said and done.

The COURT.—Objection is overruled. [60]

Mr. COBB.—Exception.

Q. Did you believe that you had authority to arrest Mr. Van Arx at that time?

A. I surely did; he was interfering with my business; I had orders from the United States Marshal to go over there and open the house, and Hunsaker had asked me to go down with him, and he told me, “I think he has got some things inside, and you know how it is in dividing up things.”

(Testimony of W. A. Shafer.)

Q. Never mind that, Mr. Shafer.

The COURT.—That will be disregarded, Gentlemen of the Jury.

Q. Mr. Shafer, did this occur in the presence of any other people?

A. Surely did; there must have been 20 or 25 people standing around.

Q. You are familiar with the street where this occurred?

A. I surely am; I am over that most every day.

Q. Is that a public street of Douglas?

A. Yes, sir.

Q. And this occurred on that street?

A. It did, yes, sir.

Q. Approximately, how many people would you say were there?

A. I would say there were 20 people at least.

Q. That is at the time that he used these words?

A. Yes, sir.

Q. Now, when you made the charge in court against Mr. Van Arx, do you remember what he was charged with?

Mr. COBB.—We object to that; the paper itself is the best evidence.

The COURT.—Objection sustained.

Q. Did you have any particular ill-feeling against Mr. Van Arx? A. No, sir; I did not.

Q. You knew him well? [61]

A. Yes, sir; I knew him well.

Q. What was your reason, Mr. Shafer, for drawing your gun after this fight?

(Testimony of W. A. Shafer.)

A. Well, when he went home to the house I didn't know but what he was going after his gun; I had arrested him for using a gun on a man, or threatening to use a gun; and I didn't know but what he had gone home after a gun; that is why I drew my gun when I told him he was under arrest.

Q. You say you had arrested him before for drawing or using a dangerous weapon?

A. I had; yes, sir; I have the date here; he was arrested on July 26, 1913, and paid a fine of \$25 for assault with a dangerous weapon.

Q. That was in the court at Douglas?

A. That was in the court at Douglas before Henson, and the man—I forget his name—the man made the complaint himself; I didn't make the complaint—some other man made the complaint against him, and even showed me where he had got hung on a nail in the house when he jumped away from the gun—whether the man was—

Mr. COBB.—I object to that.

Q. You had not made any complaint, then, prior to this time against Mr. Van Arx for any other offense?

A. No, sir; I had never made any complaint; I simply gave him a notice to clean some of his dirty, filthy toilets that he had; and they were not O'Connor's any more than they were mine—not a bit.

Q. That is a matter that he testified about this morning? A. Yes, sir.

Q. If you know about that, explain that to the jury.

(Testimony of W. A. Shafer.)

A. I went to Mr. Van Arx's place and I says this: "Mr. Van Arx, [62] you just paid a fine to the city, and you don't want to pay another, and I don't want you to pay another, but you have got to clean those toilets"; those are the words I said to that man, and then he tried to make it appear that it was the Myers' toilet—

The COURT.—I don't see what that has to do with the case.

Q. Anyway, you didn't serve any notice on him to clean O'Connor's buildings?

A. I should say I did not.

Mr. CHENEY.—That is all, you may cross-examine.

Cross-examination.

(By Mr. COBB.)

Q. You didn't take the padlock off?

A. No, sir.

Q. Have any key? A. No, sir.

Q. Had you received any word from Mr. Van Arx that he did not want you down there on those premises before you went down? A. No, sir.

Q. Are you sure of that? A. I am.

Q. On the trial of the case of the city of Douglas against Van Arx, Mr. Henson was present, wasn't he, the man who is now judge and couldn't be found?

A. I think he was.

Q. Didn't he testify in that case in your presence, and you didn't deny it, that Mr. Van Arx said that he didn't want you to go down there?

(Testimony of W. A. Shafer.)

Mr. CHENEY.—I object to that, if the Court please.

Mr. COBB.—I will withdraw the question. [63]

Q. When you went down there on this 11th day of September—it occurred the 11th day of September, 1914, did it? A. Yes, sir.

Q. You knew this property belonged to Mr. Van Arx, didn't you?

A. Why, after Hunsaker said he wanted to get in, —well, I thought I did; I thought I knew this was Van Arx's property.

Q. And when you got down there it was understood that Mr. Van Arx was going to get a key and open up the house, wasn't it?

A. No, sir; he said he wanted Van Arx and Jim Mitchell.

Q. Now, just answer my question. Mr. Van Arx tried to open the door with the key he had with him, didn't he?

A. He didn't have no key; he forgot it.

Q. Didn't he have a key that would not work?

A. I didn't see him try it.

Q. And he told you then and there, he asked you if you had a right, or any paper of any kind, authorizing your presence there?

A. That was after he first came up there.

Q. When you first went down there?

A. No; after he first came up to the house.

Q. You testified a minute ago that he told you he didn't want you around there if you didn't have any business?

(Testimony of W. A. Shafer.)

A. No; I didn't testify to any such thing.

Q. Isn't that a fact—isn't that what occurred?

A. After he came back with the key.

Q. He said you had no business there?

A. I had legal business there.

Q. I am not asking you what you had—it is for this jury to say whether you had legal business there or not—didn't he tell you that?

A. No; he did not. [64]

Q. What did he tell you?

A. He told me to go down and attend to the whores down in the other end of town.

Q. Did you do that?

A. He meant to say he would attend to the Indian whores down in the other end, I suppose.

Q. You think that is what he intended?

A. Yes, I suppose so.

Q. You knew perfectly well that Van Arx didn't want you there, didn't you?

A. I knew it after he came.

Q. You knew it was his property, didn't you?

A. I knew that Hunsaker lived there—

Q. You knew it was his property? A. Yes.

Q. Did you have a right of any kind—a paper of any kind authorizing your presence there?

A. No; it was verbal, word of mouth by Hunsaker.

Q. To go down there and open the door, and that was all, wasn't it? A. Well, I suppose—

Q. You didn't open the door?

A. He came to open the door.

Q. You could have opened the door by taking the

(Testimony of W. A. Shafer.)

hasp off if it was necessary, but that wasn't necessary?

A. I didn't know he had a key to the house.

Q. When he got back there and opened it you knew he had a key, didn't you? A. Yes.

Q. He told you after he opened the door that he didn't want you to go inside of the house, didn't he?

A. I didn't go in. [[65]

Q. You started to, didn't you?

A. I walked behind him.

Q. And when he stepped in the doorway he said you could not go in?

A. He stepped outside of the door.

Q. Then you grabbed him, didn't you?

A. I was outside too.

Q. You grabbed him when he was in the doorway?

A. When he grabbed me, yes.

Q. What were you doing there at his doorway where he could grab you?

A. I was simply on the street on the outside of his door, on the street; I had a perfect right to be there.

Q. Then, when he got you down you hollered for help, didn't you? A. I didn't holler very loud.

Q. Loud enough to get help?

A. Mr. Hunsaker grabbed hold of him pretty quick.

Q. And they pulled him off? A. Yes.

Q. And when you arose from the ground you pulled your pistol, didn't you?

A. No; I did not.

Q. When you arose from the ground didn't you

(Testimony of W. A. Shafer.)

draw your pistol?

A. Not right then; no, sir.

Q. How long before you drew your pistol, after you got up?

A. I said: "Old man, you can come along with me."

Q. You had no warrant for him, did you?

A. I didn't need any when he committed an assault upon me.

Q. You answer my questions. I asked you if you had any warrant for him? [66]

A. No, sir.

Q. There was no complaint filed against him at that time? A. No.

Q. Well, when you drew your pistol and presented it to him he yielded to the arrest, didn't he?

A. No; I had to shove him 10 or 12 feet.

Q. Shove him with the point of your pistol?

A. I did not; I took my hand; I had the gun here (indicating).

Q. And you shoved him right up to the jail?

A. No, I did not; he walked after he found out he was under arrest, but it took him a long time to find out he was under arrest. He was wrestling pretty hard and putting up a pretty hard fight, and I will say that he is a skookum old man, and I will say that to his face.

Q. You were both cursing?

A. No, sir; I did not cuss, not a word—do you call reprobate cussing?

Q. That isn't all the words that you called him,

(Testimony of W. A. Shafer.)

is it? A. Well, no, sir; I didn't cuss.

Q. You didn't call him an old bastard?

A. I did not.

Q. You were both pretty angry and pretty warm, weren't you?

A. I tell you I was pretty warm because I was wrestling.

Q. And you know now everything that you did say?

A. I do, yes; as well as if it was yesterday; I will never forget that as long as I live; that is the only trouble I ever had in my life.

Q. Now, this wasn't very far from the middle of the day, was it? A. It was after 12 o'clock.

Q. It wasn't as late as 1 o'clock, was it?

A. Well, I wouldn't say it was as late as 1 o'clock; it was [67] close to 1—it was after 12; I usually go home at 12, and I had to walk up pretty close to a mile.

Q. Now, you didn't take him before Mr. Henson, the city magistrate? A. No, sir; I did not.

Q. You could have taken him there at that time, couldn't you?

A. Well, it was about the dinner hour, and I didn't know whether was in or not.

Q. You didn't try to find out?

A. No, sir; I did not.

Q. You didn't see him as you were going up town?

A. No, sir; I did not.

Q. Mr. Henson is usually at his office at 2 o'clock, isn't he?

(Testimony of W. A. Shafer.)

A. I think his office hours are from 9 to 5.

Q. You didn't take him before him that afternoon at all? A. No, sir.

Q. Just took him to jail and locked him up?

A. I went over about 4 o'clock—

Q. You could have taken him before him any time that afternoon?

A. I went home and took those clothes off and had them cleaned, and then came back down town—

Q. If you had not been occupying the afternoon in eating your dinner and having your clothes cleaned, you could have taken him before the magistrate that afternoon, couldn't you?

A. No, I was after witnesses after that, until about 4 o'clock.

Q. And while you were looking up witnesses trying to make a case against him, you let him lie in jail?

A. He didn't ask for bail, and he didn't put up no bail.

Q. Are you in the habit of throwing men in jail and keeping them over night before bail can be fixed? [68] A. I do lots of them.

Q. Is that a habit of yours?

A. What do you mean by habit?

Q. Arresting, putting them in jail and leaving them in until the next day?

A. Yes; I arrest lots of drunks and leave them in until the next morning at 10 o'clock, which is the usual hour for court.

Q. Now, do you mean to tell the jury that you

(Testimony of W. A. Shafer.)

occupied the whole of the afternoon in eating your dinner and getting your clothes cleaned?

A. No, sir; I don't; I told you a moment ago what I was doing.

Q. And the rest of the afternoon you were looking up witnesses? A. I was.

Q. Have you got any of those witnesses here that you found on that occasion?

A. Oh, yes, I have; yes, sir.

Q. Who of your witnesses are here that were there that afternoon?

A. I have two witnesses here that was there; there ought to be three, but one isn't here.

Q. Now, Mr. Shafer, when did you serve this complaint? A. It was about 11 o'clock the next day.

Q. After I got over there, wasn't it?

A. Yes, sir.

Q. Wasn't it after 12 o'clock?

A. No, sir; it was not; you came on the 11 o'clock boat.

Q. And I went and got Van Arx out of jail?

A. He asked for bail and he got it.

Q. And after that we went up to the courthouse and asked to see the complaint and then it was that you swore to it, and made the complaint? [69]

A. Yes; the complaint was made out at the time I took him in, but I simply neglected signing it.

Q. The time I took him in?

A. The time I took him into court at 10 o'clock.

Q. Who made out the complaint?

A. Mr. Henson.

(Testimony of W. A. Shafer.)

Q. You told him what to put in it, did you?

A. I did not; I told him, of course, that he had used this language, yes.

Q. What else did you tell him?

A. I don't recollect anything else; I told him in regards to the trouble we had.

Q. Did you tell him he had also resisted an officer, and to put that in the complaint?

A. Yes, sir; I told him that he resisted, and he did resist when he wouldn't walk when I told him to.

Q. I want you to answer my questions if you can. You told him to put in the complaint also that he had resisted an officer, didn't you?

A. No, I did not.

Q. How did he come to put it in there?

Mr. CHENEY.—I object to that, if the Court please, because the witness says he did not draw up the complaint; the Judge of the court drew up the complaint, and I don't see why this witness should be questioned so long about that when he didn't draw the complaint up.

Mr. COBB.—I will withdraw the last question.

Q. Mr. Henson was not down there—

A. Down where?

Q. Where you and Van Arx had this fight?

A. No. [70]

Q. And he knew nothing about what had transpired except what you told him when he drew the complaint up? A. No.

Q. That is the complaint that you swore to, is it?

A. That is my handwriting—that is the complaint,

(Testimony of W. A. Shafer.)

I guess—either the complaint or a copy of it.

Q. That is your signature to the affidavit, isn't it?

A. Yes; that is my signature.

Q. And you say you signed that and swore to it after I got over there on the boat that leaves here at 11 o'clock? A. I did.

Q. So it was sometime after 11 o'clock that day that you swore to the complaint?

A. It was about 11 o'clock.

Q. At the time that you took Mr. Van Arx in there at 10 o'clock, there was no complaint against him?

A. The complaint was made out, but he protested that he didn't want it tried—I failed to sign it.

Mr. COBB.—I offer that in evidence (referring to the complaint).

Mr. CHENEY.—I object to that as incompetent, irrelevant and immaterial for the reason that the Court has already granted a motion for a nonsuit so far as Mr. Henson is concerned and now this paper that is offered in evidence, the contents could only be against Judge Henson; Mr. Henson wrote it, this witness didn't write it; and it is only done, your Honor, it seems to me, to get the record of the other case before this jury; and besides that, there is no complaint here by Mr. Van Arx against these gentlemen that anything occurred the next morning when he was taken into court whereby he was in any way injured; he gave his bond and got just what [71] he asked for; he was brought into court by Mr. Shafer and they were ready to go on with the case, and he protested and said no, he did not want to go

(Testimony of W. A. Shafer.)

on, that he didn't want to do anything until his lawyer came; his request was granted.

The COURT.—Objection overruled.

(Whereupon said complaint was received in evidence and marked Plaintiff's Exhibit No. 1.)

Mr. COBB.—That is all.

Redirect Examination.

(By Mr. CHENEY.)

Q. Mr. Shafer, I understand the complaint, you say, was made out in the morning when you took Mr. Van Arx to jail?

A. It was; it was made out, but I neglected signing it, because he protested going on with the trial—it was just neglected.

Q. You had made the complaint—that is, orally to the Court? A. Yes, sir; I did.

Q. Did you see the Judge draw the complaint up?

A. Yes, sir; I did.

Q. How long was Mr. Van Arx in court that morning at 10 o'clock?

A. I don't suppose it was over half an hour.

Q. Half an hour?

A. Not over that; it might have been 15 minutes; he simply protested when he came in, and said his lawyer was coming on the 11 o'clock boat, and, of course, the Judge waited until the lawyer came, and in the meantime we put him back into the jail.

Q. Mr. Cobb asked you about who those witnesses were, who are the witnesses you found on the beach there? [72]

A. One was Willis, and the other was Charlie

(Testimony of W. A. Shafer.)

Stroupe, and Annie Joseph, and Frank Dean; of course Frank Dean went to Prince Rupert.

Q. Those are the same witnesses subpoenaed here in this case? A. Yes; they are the same witnesses.

Mr. CHENEY.—That's all.

(Witness excused.)

Mr. CHENEY.—I want to introduce ordinance No. 39 of the city of Douglas, and if Mr. Cobb has no objection to my introducing it without calling the city clerk, I will not call him.

Mr. COBB.—That is all right—but I object to this because in so far as this case is concerned the ordinance is absolutely void, for the reason that it is too broad and uncertain in its scope.

The COURT.—Objection overruled.

Mr. COBB.—Exception.

(Whereupon said ordinance was received in evidence and marked Defendant's Exhibit "A," and read to the jury as follows: "Ordinance No. 39. Defining certain misdemeanors and prescribing a penalty therefor. * * * Disorderly Conduct. Section 15. If any person shall be guilty of disorderly conduct, or of using profane or obscene language within the corporate limits of the town of Douglas, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the municipal jail for a period not exceeding ninety days, or by both such fine and imprisonment, in the discretion of the municipal magistrate.")

Testimony of Tom Willis, for Defendant.

TOM WILLIS, a witness introduced on behalf of the defendant, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in answer to questions as follows:

Direct Examination.

(By Mr. CHENEY.)

Q. State your name. A. Tom Willis.

Q. Where do you live? A. Douglas.

Q. Where do you work? A. Treadwell.

Q. The Treadwell mine?

A. I used to work in the Treadwell mine; now I am working on the ditch.

Q. The Treadwell ditch? A. Yes, sir.

Q. Were you in and about Douglas on or about the 12th of September of last year when there was some trouble between Mr. Van Arx and Mr. Shafer?

A. Yes, sir.

Q. Where were you at that time? A. What?

Q. What part of the town were you in?

A. The beach side of Steven's store, at this house.

Q. That is on the street down on the beach there?

A. On the beach side of the track.

Q. Now, will you state to the jury what you saw and what you heard of this trouble between Shafer and Van Arx—just state to the jury what you heard and what you saw.

A. I worked in Treadwell on the night shift in September, and [73] when I got up before noon I walked down without my hat, and walked right straight to see Charlie Straupe.

(Testimony of Tom Willis.)

Q. Is that the gentleman sitting in the back seat (indicating)?

A. Yes, sir; and he asked me, he said, "Are you up already? I say, "Yes," and I went in there; a few minutes afterwards I heard a noise outside and I looked out and I saw Mr. Shafer and Van Arx out there, and I see Van Arx go up to his house; after he go up he called some kind of words to Mr. Shafer; he swore to him, and called Shafer "You dirty bastard, you got no business to come in my house, you son-of-a-bitch," he say; after that Shafer got hold of him and Shafer slipped down and Van Arx was on top of him, and Mr. Hunsaker pulled him off, and after he got up Shafer took out a gun out of his pocket—held it down, didn't point it at him—and told Mr. Van Arx, "Come, I am going to arrest you"; and he put his hand down with the gun, and when he come half way to Mike's store he had his gun in his pocket, and go down to arrest Van Arx.

Q. Where was it, on the street?

A. It was right up close to the street, up where the hospital comes down.

Q. You mean the street that runs from Douglas to Treadwell?

A. Yes, sir; right where the hospital street comes down; right on the corner I was standing.

Q. Where were Van Arx and Shafer standing when you heard Van Arx use those words?

A. Mr. Van Arx was standing right against his house, and Shafer was standing on the street; they started to fight and Mr. Shafer slipped down on the

(Testimony of Tom Willis.)

sidewalk and Van Arx fell right on top of him, and he called and Mr. Hunsaker pulled him off. [74]

Q. You say Mr. Van Arx was standing in front of his door? A. Yes, sir.

Q. Shafer was standing in front of him?

A. Yes, sir.

Q. You heard Van Arx say those words?

A. I heard what he said.

Mr. CHENEY.—That is all.

Cross-examination.

(By Mr. COBB.)

Q. Where were you?

A. Well, I was standing right where the hospital street comes out, at the corner.

Q. How far from the door? A. Not very far.

Q. Well, how far?

A. I couldn't measure right to the place, it is about 15 feet, I think.

Q. About 15 feet? A. Yes, sir.

Q. You say Mr. Van Arx was inside of his door?

A. No, sir; the door was shut.

Q. The door was shut? A. Yes, sir.

Q. He was right on the threshold of it?

A. Yes, sir.

Q. And where was Shafer standing?

A. On the sidewalk, near to Mr. Van Arx.

Q. On this little porch or elevated place?

A. He was standing right against his door, and Shafer was standing on the street, and they started to fight; Shafer slipped down on the sidewalk—the sidewalk was right on top of the [75] porch, a

(Testimony of Tom Willis.)

little porch and step, and he fell right down, and Mr. Van Arx was on top, and Mr. Hunsaker pulled him off.

Q. What did Shafer say?

A. Oh, I didn't hear what Shafer said; that is all I heard, what Van Arx said, "You have got no business to come in my house."

Q. Was Shafer saying anything?

A. I heard Van Arx say, "You have no business in my house, you bastard."

Q. Do you remember anything that Shafer said?

A. That is all I remember, what Van Arx said.

Q. Don't you remember what Shafer said?

A. No, sir.

Q. Why don't you remember?

A. That is all I heard; when he come up he, "You come right down, I am going to arrest you."

Q. You didn't see Mr. Shafer until he got up?

A. No.

Q. Do you remember whether he did say anything or not? A. Well, I didn't hear what he said.

Q. Could you hear him talking without understanding it? A. Who?

Q. Shafer.

A. No, I didn't understand what he said.

Mr. COBB.—That is all.

Redirect Examination.

(By Mr. CHENEY.)

Q. How many people were there around there?

A. Well, lots of people, lots of Greeks, Slavonians were there.

(Testimony of Tom Willis.)

Q. At the time Van Arx was using this language, how many people [76] do you think were there?

A. A lot of people, twenty or twenty-five.

Q. How many would you say?

A. I know Johnnie was with me, and Annie Joseph was right close to us, and Frank Dean was there, too, and there were Russians, and all kinds of mixed people there.

Q. What was that?

A. There were a lot of people there, I cannot remember.

Mr. CHENEY.—That is all.

(Witness excused.) [77]

Testimony of Charley Straupe, for Defendant.

CHARLEY STRAUPE, introduced as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Direct Examination.

(By Mr. CHENEY.)

Q. Your name is Charley Straupe?

A. Yes, sir.

Q. What is your business?

A. Treadwell, mining.

Q. Are you working now?

A. Well, I don't work for 17 days.

Q. Why? A. Well, I got hurt in my eye.

Q. What did you get in your eye, a rock?

A. A rock.

Q. Were you in Douglas last September?

(Testimony of Charley Straupe.)

A. Yes, sir.

Q. Where do you live, Charley?

A. I live in Douglas.

Q. Do you know this house where Hunsaker and his wife lived? A. Yes.

Q. You know that place? A. Yes, sir.

Q. Did you see any trouble between Mr. Van Arx and Mr. Shafer one day in September on the beach?

A. Yes, sir.

Q. How far was your cabin from this house where Hunsaker and his wife lived?

A. About 30 or 40 feet from my place.

Q. Just tell the jury what you saw, Charley?
[78]

A. Well, I was working the night shift, and just about a half an hour I got up and opened the door, and I saw Tom Willis and he spoke to me; he was standing on the street, and I says, "Come in," and he came inside, and about 10 minutes afterward we heard some talking on the street, and I says to him, "My, there is something wrong," so we opened the door and we stepped outside, and I see Mr. Shafer, Mr. Van Arx and Mr. Hunsaker was there talking together—we walked right close and I see Mr. Van Arx was standing up on his front door, right at his front door, and Mr. Shafer and Hunsaker were standing on the street; and so Mr. Shafer, he asked him to go inside, and he said, "You old whore son-of-a-bitch," he says, "You go down the line and watch the sports"; he says, "You have got no business in my house." Well, it seemed to me Mr. Shafer

(Testimony of Charley Straupe.)

walked about three feet, and he came right close to him, and I don't know which one grabbed the other first, I cannot tell, but Mr. Shafer was down and Mr. Van Arx was on top, and Mr. Shafer says, "Take him off"; so Mr. Hunsaker and a few of the other fellows took him off.

Q. Took Van Arx off of Shafer?

A. Yes. So Mr. Shafer says, "You old rascal, you are under arrest"; so Mr. Shafer pulled his gun, and held it down, and Mr. Van Arx didn't want to go, and he said, "You are are under arrest, you old rascal"; he had to drag him about 10 or 15 feet, and he walked all right after that.

Q. Did Mr. Shafer go into Mr. Van Arx's house?

A. No, sir.

Q. How many people were there?

A. About 20 or 25, children, ladies and everything.

Q. This house that Hunsaker lived in, where is it with reference to the street? [79]

A. Well, it is about three feet.

Q. Faces on the street, does it?

A. Well, it has got sort of a little sidewalk about three feet from the house to the street, and that is about a foot down the street lower.

Q. What do you mean, that there was a raise built up with a 2 x 4, or something like that?

A. It is a little porch made a foot above the street.

Q. Something like that in the floor there (indicating raised witness stand in courtroom)?

A. Yes.

Mr. CHENEY.—That is all.

(Testimony of Charley Straupe.)

Cross-examination.

(By Mr. COBB.)

Q. Did you hear what Mr. Shafer said?

A. That time when I heard was when Mr. Van Arx didn't have him in his place, and at that time he started to fight, and that is all I hear.

Q. Didn't you hear Mr. Shafer use any language?

A. No.

Q. Didn't hear him call him an old reprobate?

A. No, sir; that time he dragged him down the street he called him an old rascal.

Q. Now, at the time you say you cannot tell which one grabbed the other first?

A. No, sir; there was lots of people all around there.

Q. At the time they grabbed each other, you say, Van Arx was standing in his door?

A. Yes, sir.

Q. And Shafer was up on this little porch? [80]

A. Yes, sir; Shafer was on the street.

Q. Up on this little elevated place?

A. No; Mr. Van Arx was at the door and Mr. Shafer was on the street.

Q. And he didn't step off of this little place?

A. He walked to Mr. Van Arx.

Q. What did he do with his pistol after he pulled it out?

A. Why, he pulled it out and he held it down.

Q. Held it down like that (indicating)?

A. Yes; held it down.

Q. Didn't present it at him? A. No, sir.

(Testimony of Charley Straupe.)

Q. Didn't order him along with a pistol in front of him? A. Yes, sir.

Q. Sure of that? A. I was right close.

Mr. COBB.—That is all.

Redirect Examination.

(By Mr. CHENEY.)

Q. Did you understand that last question, Charley, that Mr. Cobb asked you; he asked you if he pushed him along with a pistol. A. Yes.

Q. How did he push him along?

A. Well, he had his pistol in his hand and had his arms out like this (indicating), and he said, "You old rascal, you are under arrest."

Q. Now, you said it was something like this floor here—explain to the jury whether the house is higher than the street [81]

A. No, the street is higher.

Q. There is a jog like that? A. Yes.

Q. And the house stands in here (indicating)?

A. Yes.

Q. The house is lower than the street?

A. Yes, sir.

Mr. CHENEY.—That is all.

(Witness excused.) [82]

Testimony of Annie Joseph, for Defendant.

ANNIE JOSEPH, a witness introduced on behalf of the defendant, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

(Testimony of Annie Joseph.)

Direct Examination.

(By Mr. CHENEY.)

Q. What is your name?

A. Annie Joseph.

Q. Where do you live? A. Douglas.

Q. Were you in Douglas last September, last year?

A. Yes.

Q. Do you remember some trouble between Mr. Van Arx and Mr. Shafer? A. Yes.

Q. Last September, about the 14th, about the middle of September? A. Yes, I see that.

Q. You saw that? A. Yes.

Q. Just state to the jury what you saw about that trouble—tell what you saw.

A. Well, I see—just as I come out of my sister's house I see the people down there, and I go there, and I see Van Arx talking, and he stand just at the door, and Shafer stand up behind Van Arx, and talking; I couldn't hear what he said, talking to him, and he get the key and wanted to open, and Shafer stand up, and Van Arx, he calls son-of-a-bitch, Shafer.

Q. He called what?

A. He called son-of-a-bitch, that is all I hear.

A. He called that to Shafer? [83]

A. Van Arx and he started to talk, Van Arx, and Shafer down and Van Arx on top, and Hunsaker he go over and he took Van Arx off and let up Shafer, and get up Shafer, and said he got to arrest him, and Van Arx was talking, and he took the gun out of his pocket, and after he come, that is all I know.

Q. You saw you couldn't understand Van Arx very well?

(Testimony of Annie Joseph.)

A. Well, I could not understand, that is all I heard; he called him son-of-a-bitch.

Q. Did Mr. Shafer go inside of Mr. Van Arx's house?

A. No, I didn't see that; that is all I see.

Q. Were there any people there besides you?

A. What?

Q. When Mr. Van Arx used these words was there anyone there besides you?

A. Lots of people, all kinds of different people, but I didn't look to see who was there.

Mr. CHENEY.—That is all.

Cross-examination.

(By Mr. COBB.)

Q. You have never been called as a witness concerning this matter any time before, have you—you were not called as a witness in the trial of the case of the City of Douglas against Victor Van Arx, were you? A. I cannot understand much English.

Q. How is that?

A. I don't know what you said.

Q. You don't know?

A. I don't understand much.

Q. You are a native woman, are you? A. Yes.

Q. You have never been called to tell this thing in court before, [84] have you—this is the first time you have ever told about it in court?

A. Before I was witness, but I never come in here.

Q. Never been in court before about this?

A. Yes.

Q. Have you?

(Testimony of Annie Joseph.)

A. Oh, I never come in here before.

Q. Never been to court before? A. No.

Q. You told Mr. Shafer about it and he told you to come over? A. Yes.

Mr. COBB.—That's all.

(Witness excused.) [85]

Testimony of John Henson, for Defendant.

JOHN HENSON, a witness introduced on behalf of the defendant, who being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Direct Examination.

(By Mr CHENEY.)

Q. Mr. Henson, what position did you occupy in September, 1914, at Douglas?

A. I was city clerk and municipal magistrate of the city of Douglas.

Q. What position did Mr. Shafer occupy at that time? A. He was marshal.

Q. You were city clerk, and you are familiar with the ordinances there of the city? A. Yes, sir.

Q. I will ask you whether or not this ordinance that is introduced, No. 39, whether you know of your own knowledge that that was in force at the time, September, 1914? A. I do; yes, sir.

Q. I wish you to state what occurred in your office on the morning of the 13th, I believe it was—the next day after this trouble between Mr. Van Arx and Mr. Shafer—what occurred with reference to Mr. Van Arx's case?

A. I think that was the 11th of September; I be-

(Testimony of John Henson.)

lieve the records will show it was the 11th.

Q. It was either the 11th or 12th; they alleged the 11th in the complaint. What I want you to state is what occurred before you there as municipal magistrate that morning when Mr. Shafer brought Mr. Van Arx into the courtroom.

A. It was, I think, about 15 or 20 minutes past noon, it was shortly after—

Q. I don't mean that, I mean in the morning.
[86]

A. You mean the morning of the trial, is that what you mean?

Q. The first time he brought Mr. Van Arx into your office?

A. Oh, yes; that was the morning of the 12th, of course.

Q. Mr. Shafer didn't bring Mr. Van Arx in the day he was arrested, that afternoon?

A. Oh, no; excuse me. I thought you were asking me what occurred on the day of the arrest of Mr. Van Arx.

Q. You don't know anything about the arrest, do you? A. Very little.

Q. What occurred in the morning, the first time Mr. Van Arx was brought into your courtroom, with reference to that case?

A. Well, he was brought into the courtroom by the marshal, and we proceeded to make out the complaint; I listened to what the marshal told me, and I originally wrote the complaint as being for,—I think it read originally—that original complaint that I drew—resisting an officer, and after I had heard what

(Testimony of John Henson.)

Mr. Shafer said, I made up my mind that I didn't think the case was strong enough to be prosecuted on that charge, and then I wrote the complaint charging him with using obscene and profane language.

Q. Under what ordinance, Mr. Henson?

A. Under ordinance 39, I think, section 13.

Q. Now, what happened when Mr. Van Arx came in there—did you immediately send him back to jail, or what did you do?

A. Well, Mr. Shafer brought in Van Arx from the jail, and they sat down and I immediately began to read this complaint to Mr. Van Arx; he put up his hands this way (indicating), and he didn't want to hear anything; he said, "I don't want to hear anything; my attorney comes on the 11 o'clock boat," [87] and he says, "I don't want to go to trial now"; he says, "I don't want to hear nothing." I said, "All right; you want me to put the case off?" "Yes, I don't want to hear nothing about it," he said, that his attorney was coming over on the 11 o'clock boat and I set the case for 2 o'clock and Mr. Van Arx was taken back to jail again. That is all that happened that morning at that time.

Q. You continued the case then and told the marshal to take him back to jail? A. I did.

Q. Was the case taken up afterwards?

A. Yes, sir.

Q. And tried? A. Yes, sir.

Q. Did you hear Mr. Fuesi's statement here on the witness-stand, Mr. Henson, about what he said to you about offering to go good for Mr. Van Arx?

(Testimony of John Henson.)

A. I heard all he said; yes, sir.

Q. Will you state to the jury what occurred at that time, and what time it was that it occurred?

A. That afternoon I was pretty sick; I had cramps in my stomach and I felt very bad; I usually stay in my office until 5 o'clock, but that afternoon I went out and got a drink of brandy—I was suffering from cramps in my stomach, and I walked up to my house—I think it was in the neighborhood of somewhere about 4 o'clock when I left my office—I went up to my house, and my wife was away, and there was nobody in the house when I got up there; I got to feeling pretty bad and I laid down on the bed—I was in pain, and finally when I did come to myself I should judge it was 5 o'clock or a quarter past 5, possibly, and I thought to myself, [88] “I feel pretty rocky; I think I will go and get a cup of black tea.” I had been in the habit of eating at the Jap restaurant at the corner of the wharf, and I walked down D Street to the Jap restaurant and had a cup of tea; as I was going down there I thought I would go up to the office and lock up my safe and call it off. Mr. Fuesi came out from one of the stores—he was standing somewhere, whether it was in front of his own store or whether it was in front of some other store, possibly in front of the drug store, I could not say—he came out to me and he said, “Say, what are you holding Van Arx for?” He says, “You have got no right to arrest him”; he says, “A man has got a right to protect his own property.” I said,

(Testimony of John Henson.)

“Well, I don’t know about that; well, he is in jail.” He said, “I know he is, I heard so, but you cannot keep him in jail.” I said, “Well, I guess I can—I guess we can,” and with that he began to talk some more about the case—about the merits of the case, and about the right of the marshal to arrest him, and all this, and I said, “I don’t want to talk this case with you at all.” With that I walked away, and that is about the substance of what Mr. Fuesi said to me; he never asked me for bail for the man.

Q. Was Mr. Hunsaker with him?

A. I didn’t see him, sir; if he was there I didn’t see him.

Q. Mr. Hunsaker didn’t say anything to you?

A. No, sir; he might have been on the street by the side of him, but if he was I didn’t see him.

Q. You say Mr. Fuesi did not say to you that he would go good for Van Arx?

A. No, sir; he didn’t; he started to argue the merits of the arrest with me, and I think I wound up by saying exactly [89] what he said, “Nothing doing, I don’t want to talk to you any more; there is nothing doing until to-morrow morning at 10 o’clock”; I think that was nearly all of what I said to Mr. Fuesi.

Q. What time of day was this, Mr. Henson?

A. That was in the neighborhood of half-past five—I know it was shortly after 5 o’clock; I looked at my watch in my house, and I thought it was my lunch hour—supper time—I never eat but two meals a day,

(Testimony of John Henson.)

breakfast before I go to the office and 5 o'clock when I go to my dinner—and I know it was in the neighborhood of half-past 5 o'clock.

Q. State what your custom was with reference to your office hours as city magistrate?

A. Well, my office hours are from 9 o'clock in the morning until 5 o'clock at night—that is my regular office hours; I always lock up my office at 5 o'clock, and sometimes I would go back after supper and sometimes I would not; sometimes I would stay there if I was very busy, and sometimes I would go to my desk and work in the evening.

Q. These city cases that came before you as magistrate, what was your custom with them?

A. My custom, as a rule, I called them at 10 o'clock in the morning, unless the Marshal came and said, "Here, this man is arrested for some slight offense, and he wants bail, or has offered me bail," or something like that—then I would bring him over right away.

Q. Now, when Mr. Van Arx came into court at 10 o'clock in the morning, did he ask you for bail?

A. No, sir; he never opened his head about bail; never said nothing; never said he didn't want to go back to jail or anything of the kind; not a single human being ever spoke [90] a word to me about bail for that man until Mr. Cobb came over, and Mr. Cobb says to me, "What are you doing arresting a man here without a warrant and refusing him bail"?

(Testimony of John Henson.)

I said, "Mr. Cobb, nobody has offered me bail for that man."

Q. Did you see Mr. Shafer sometime in the afternoon there after he arrested Von Arx?

A. Yes, sir; I did.

Q. What condition was he in?

A. He came past the door—I think it was sometime after one o'clock—and he passed the door, and as he passed there he stood and looked in the door, and he said, "I have got Von Arx down here," and I said, "You look as though you had somebody"; and he was mud from head to foot, his face was scratched, and that is all I said. He said, "I am going on to get my dinner and cleaned up," and that is all I saw of the marshal.

Q. You stated that no one came to your office in regard to Mr. Von Arx? A. Absolutely no, sir.

Q. Did you have any ill feeling against Mr. Von Arx?

Mr. COBB.—I object to that as immaterial.

A. No, sir, none whatever. I have had two or three cases before with him, but I always tried to do the right thing, and I believe Mr. Von Arx will say that I never did anything against the law with him.

Mr. COBB.—I don't see how that is material.

The COURT.—I don't see, Mr. Cheney— ?

Mr. CHENEY.—That is all. [91]

(Testimony of John Henson.)

Cross-examination.

(By Mr. COBB.)

Q. Mr. Henson, do you mean to tell this jury that old Theodore Hunsaker, who is now dead, did not go to you and ask for bail immediately after Mr. Von Arx was arrested?

A. I say absolutely he never did.

Q. And Mr. Fuesi did not go to you with Hunsaker afterwards?

A. Mr. Fuesi never was in my office that day.

Q. There in front of Bloedthorn's store?

A. I have told you just exactly what passed on that evening; there was nothing else happened, and nobody ever came in that office—he or anybody else.

Q. When you did fix the bail you fixed it at \$50?

A. When you asked for it, of course.

Q. And it was furnished instantly?

A. Yes, sir.

Q. After I got over there? A. Yes, sir.

Q. When was it that you saw the marshal just after this arrest,—Shafer?

A. He was passing my door, as I told you; he had to pass my door in going from the jail, and he stood in my door and said just what I told you.

Q. You didn't see him on the way to jail with Von Arx at all?

A. I couldn't very well unless I had been out looking—

(Testimony of John Henson.)

Q. I am asking you if you did see him on the way to jail?

A. No, sir; I didn't know the man was arrested until Mr. Shafer stood in front of my door and told me he had him arrested.

Q. You say your office hours are from 9 to 5?

A. Yes, sir.

Q. And on this day you were in your office from 9 to about 4 o'clock? [92]

A. Yes, sir; I was.

Q. All the afternoon. And if this man had been brought to you to have his bail fixed, you would have done so?

A. Certainly; I never refused a bail yet.

Q. You knew that Mr. Von Arx could furnish any reasonable bail?

A. I didn't know anything about it.

Q. You didn't?

A. I didn't know anything about it; I am not supposed to know.

Q. That isn't the point. I am asking you if you didn't know as a matter of fact that for any violation of your city ordinances, your little petty misdemeanors, Mr. Von Arx could furnish any reasonable bail?

A. I should judge he can; I never had any reason for denying the bail on account of his not being good for it.

Mr. COBB.—That is all.

(Testimony of John Henson.)

Mr. CHENEY.—That is all.

(Witness Excused.) [93]

Testimony of Nakimuri, for Defendant.

NAKIMURI, a witness introduced on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. CHENEY.)

Q. Nakimuri, where do you live?

A. Douglas—now here in Juneau.

Q. What were you doing last September in Douglas? A. September in Douglas.

Q. What were you doing there?

A. I was in Douglas in business there.

Q. Ran the Owl Restaurant?

A. Yes, sir; all the time there was some people in there.

Q. Did the city marshal come to your place for meals for the prisoners? A. Yes.

Q. Did you keep a book and keep track of how many meals you furnished?

A. I have a book here.

Q. Have you got anything in that book showing how many meals you furnished to Mr. Shafer for the jail on the 11th of September, last year? See if you can find that. A. 11th, one lunch.

Q. 12th? A. Two lunch.

Q. Was that all the meals you furnished?

A. Oh, no; 14th, 15th, 17th, 18th, 19th, 20th, 21st

(Testimony of Nakimuri.)

and 22d; that is all September.

Q. Does that show a difference between dinner and lunch, or just lunch?

A. Some meals, some lunch; you know just one marked down; you [94] know city meal it don't make any difference, always square meal.

Q. And that shows how many meals or lunches there on the 11th?

A. 11th September, 2 lunches; 12th, one lunch; 13th, two lunches.

Q. On the 11th is two lunches?

A. 11th, two lunches.

Q. What kind of lunches are they, generally, Nakimuri? A. What?

Q. How did you put them up—what did they generally have? A. What?

Q. What did you put them in—pail, basket or what? A. Bucket.

Q. Who did you give those to—who came after them—who gets them?

A. All the time comes in here Mr. Shafer.

Q. And you charged those to the city?

A. Oh, yes; charge all every month.

Mr. CHENEY.—That is all.

Cross-examination.

(By Mr. COBB.)

Q. You furnished all the meals to the jail, didn't you? A. What?

Q. At that time you furnished all the meals to the prisoners in jail, didn't you?

(Testimony of Nakimuri.)

A. I don't know much English, you know.

Q. What I am getting at is, did Mr. Shafer get meals for the prisoners anywhere else?

A. Yes; all the time Mr. Shafer.

Q. From somebody besides you, or did he get them from you? A. Yes; Mr. Shafer come in.

Q. He didn't get any meals from anybody else except you? A. Yes. [95]

Q. I am afraid you don't understand me. Was there any other restaurant over there where Mr. Shafer got meals for the prisoners except yours?

A. Yes; I give to him.

Q. You gave him all the meals furnished?

A. Yes.

Q. Now, then, on September 11th how many meals did you furnish? A. Two lunch.

Q. Was that all the meals you furnished?

A. Yes.

Q. Just two meals?

A. Yes; morning time, evening time, all lunch.

Q. You mark them all lunch? A. Yes.

Q. On the 11th you furnished just two meals?

A. Yes; 11th, two meals; 12th, one meal; 13th two meals.

Q. On the 12th how many meals did you furnish?

A. Three meals.

Mr. COBB.—And on the 11th you only furnished two meals. That is all.

Mr. CHENEY.—That is all.

(Witness Excused.) [96]

**Testimony of W. A. Shafer, for Defendant
(Recalled).**

W. A. SHAFER, the defendant herein, upon being recalled on his own behalf, having been previously duly sworn, testified as follows:

Direct Examination.

(By Mr. CHENEY.)

Q. Mr. Shafer, how many prisoners did you have in the jail on the 11th? A. I had two.

Q. Von Arx was one of them?

A. Yes, sir; and Victor Kosky was another; had two Victors in it.

Q. They were the only two?

A. Yes, sir; that was all.

Q. On the 12th how many did you have?

A. He was let out on the 12th, and Victor was still in; that is the man he said was crazy—he was intoxicated.

Q. As a matter of fact was he crazy—was he adjudged insane?

A. No, sir; he had been drinking pretty heavy, and of course that was all.

Q. He was let out when?

A. Von Arx was let out on the 12th, and Victor was let out shortly after. I think he paid a fine of \$20. When I got a meal,—I would take them sometimes to the restaurant. What he calls a lunch is when I would take a bucket and carry it to the prisoner—that was lunch; when I took the prisoners to the restaurant, that is a meal; of course they were all the same price.

(Testimony of W. A. Shafer.)

Q. You went to the restaurant and got this and carried it to him? A. Yes, sir.

Mr. CHENEY.—That is all.

Mr. COBB.—You didn't take Von Arx up to the restaurant for any meals, did you? [97]

A. I carried him a bucket.

Q. (By Mr. COBB.) I asked you if you took Von Arx up to the restaurant for any meals?

A. No, sir; I did not.

Q. (By Mr. CHENEY.) You didn't take the other fellow up, did you, either?

A. No, sir; I did not.

Mr. CHENEY.—That's all.

Mr. COBB.—That's all.

(Witness Excused.)

Mr. CHENEY.—That is our case, your Honor.

DEFENDANTS REST. [98]

REBUTTAL.

Testimony of John Fuesi, for Plaintiff (In Rebuttal).

JOHN FUESI, a witness introduced upon behalf of the plaintiff, upon being recalled and having been previously duly sworn, testified in rebuttal as follows:

Direct Examination.

(By Mr. COBB.)

Q. Mr. Fuesi, you have been sworn?

A. Yes, sir.

Q. You heard the statement of Mr. Henson as to the conversation between you and him?

(Testimony of John Fuesi.)

A. Yes, sir.

Q. Did any such conversation as that occur?

A. In a certain way.

Q. What part of it occurred?

A. I offered to go bail, me and Theodore, and that was right in the front of Bloenthorn's store, and I noticed that Mr. Henson was pretty well intoxicated—the way it looked to me—and he said, “Nothing doing until to-morrow at 10 o'clock.”

Q. That is all the conversation that occurred?

A. Yes.

Mr. COBB.—That's all.

Cross-examination.

(By Mr. CHENEY.)

Q. Why didn't you say that before when you testified? A. It wasn't necessary.

Q. You found it necessary since you thought it over?

A. Yes, sir; I didn't think he would put me down a liar.

Mr. CHENEY.—That's all.

(Witness Excused.) [99]

**Plaintiff's Exhibit No. 1 — Complaint, City of
Douglas vs. Von Arx, in Municipal Magistrate's
Court.**

Entered p. 516.

*In the Municipal Magistrate's Court, for the City of
Douglas, District of Alaska, Division No. 1.*

CITY OF DOUGLAS,

Plaintiff,

vs.

VICTOR VON ARX,

Defendant.

Violation Section No. 15 of Ordinance No. 39 of the
City of Douglas.

Victor Von Arx is accused by W. A. Shafer, marshall, in this complaint, of the misdemeanor of disorderly conduct committed as follows: That said Victor Von Arx did, in the city of Douglas, in the District of Alaska, and within the jurisdiction of this Court, on the eleventh day of Sept., 1914, resist ~~the authority of said marshall~~ and use vile, profane and obscene language within the corporate limits of the town of Douglas, contrary to and in violation of Section No. 15, of Ordinance No. 39, of the city of Douglas, in the District of Alaska, which ordinance was passed and approved by the common council of the city of Douglas the tenth day of August, 1908.

JOHN HENSON.

United States of America,
 District of Alaska,
 City of Douglas,—ss.

I, W. S. Shafer, being first duly sworn, depose and say that I am the person who executed and signed the complaint in the above-entitled and foregoing action; that I have read said complaint, know the contents thereof, and that the same is true.

W. A. SHAFER.

Subscribed and sworn to before me this twelfth day. Sept. 14.

JOHN HENSON,

Municipal Magistrate for the City of Douglas.
 [Seal of the City of Douglas.]

[Written in pencil]: Case called at 10 A. M. Sept. 12 and continued to 2 P. M. on request of defendant, for appearance of atty. Continued to 2 P. M. Monday, Sept. 14.

Plff's Exhibit No. 1, Received in Evidence Oct. 23, 1915, in Cause No. 1247-A. J. W. Bell, Clerk. By John T. Reed, Deputy. [100]

And the above and foregoing was all the testimony and evidence offered or introduced by the respective parties, and thereupon the following motion was made:

“Mr. CHENEY.—Now I desire to make a motion for an instructed verdict for the defendant Shafer in this case, or the defendants in this case; (of course the nonsuit) has been granted in favor of defendant Henson, and I believe the case is only

against defendant Shafer), on the ground that plaintiff has failed to introduce sufficient evidence to substantiate the allegations of his complaint; failed to prove any conspiracy; failed to prove any injury or damage of any kind.

(Argument by Mr. COBB.)

The COURT.—Gentlemen of the Jury: Under the law the plaintiff in this case has not made a case that is sufficient to go to the jury. It becomes my duty to instruct you that it is your duty to find a verdict in favor of the defendant. Elect one of your number as foreman and sign the verdict that is presented to you—you can do that without leaving your seats.”

To which instruction and ruling of the Court the plaintiff then and there excepted.

And because the above and foregoing matters do not appear of record, I, Robert W. Jennings, the judge before whom said cause was tried, do hereby certify to the above Bill of Exceptions as correct and allow the same and order it filed as a part of the record herein, and during the term at which said cause was tried.

Dated this the 29th day of January, 1916.

ROBERT W. JENNINGS,

Judge.

Filed in the District Court, District of Alaska, First Division. Jan. 31, 1916. J. W. Bell, Clerk. By C. Z. Denny, Deputy. [101]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1247-A.

VICTOR VON ARX,

Plaintiff,

vs.

W. A. SHAFER and JOHN HANSON,

Defendants.

Assignment of Errors.

Now comes the above-named defendant and plaintiff in error, Victor Von Arx, and assigns the following errors committed by the Court on the trial and in the rendition of the judgment, upon which he will rely in the Appellate Court:

I.

The Court erred in granting the Motion of the Defendant, John Hanson for a nonsuit.

II.

The Court erred in directing a verdict for the defendant W. A. Shafer.

And for said errors the plaintiff, Victor Von Arx, plaintiff in error herein, prays that the judgment herein be reversed and said cause remanded and for such other orders and directions as to the court may seem proper.

J. H. COBB,

Attorney for Victor Von Arx, Plaintiff in Error.

Filed in the District Court, District of Alaska,
First Division. Jan. 31, 1916. J. W. Bell, Clerk.
By John T. Reed, Deputy. [102]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1247-A.

VICTOR VON ARX,

Plaintiff,

vs.

W. A. SCHAEFER and JOHN HANSON,

Defendants.

Writ of Error.

The President of the United States to the Honorable the Judges of the District Court of Alaska, Division Number One, Greeting:

Because in the record and proceedings as also in the rendition of the judgment upon a verdict, which is in the said District Court before you or some of you, wherein Victor Von Arx is plaintiff and W. A. Schaefer and John Hanson are defendants, a manifest error hath happened, to the great damage of the said Victor Von Arx, as by his petition appears,—

WE BEING WILLING that error, if any hath happened, should be corrected and speedy justice done to the parties in that behalf, do command you, if judgment be therein given, that then, under your hand and seal, distinctly and openly, you send the record and proceedings aforesaid, together with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same in the city of San Francisco, State of California, within thirty days from the date hereof, that the record

and proceedings aforesaid, being inspected, the said Appellate Court may cause further to be done therein to [103] correct that error, which of right and according to the laws and customs of the United States ought to be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States and the Seal of the District Court for Alaska, this the 31st day of January in the year of our Lord one thousand nine hundred and fifteen.

J. W. BELL,
Clerk of the District Court for Alaska, Division
Number One.

Allowed by:

[Seal] ROBERT W. JENNINGS,
District Judge.

Service of the above and foregoing Writ of Error is admitted to be duly made this the — day of December, 1915.

Attorney for W. A. Schaefer and John Hanson.

Filed in the District Court, District of Alaska,
First Division. Jan. 31, 1916. J. W. Bell, Clerk.
By John T. Reed, Deputy. [104]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1247-A.

VICTOR VON ARX,

Plaintiff,

vs.

W. A. SCHAEFER and JOHN HANSON,

Defendants.

Bond.

KNOW ALL MEN BY THESE PRESENTS:
The we, Victor Von ARX, as principal, and Emery Valentine as surety, are held and firmly bound unto W. A. Shafer and John Hanson in the penal sum of two hundred and fifty (\$250) dollars, to the payment of which well and truly to be made we hereby bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

The condition of the above obligation is such that whereas the above-named W. A. Shafer and John Hanson as defendants recovered a judgment against the above-named Victor Von Arx as plaintiff in the above-entitled and numbered cause, that the plaintiff take nothing by his action and that the defendants recover of the plaintiff their costs; and whereas the above bound Victor Von Arx is suing out a Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse said judgment;

NOW, THEREFORE, if the above-named Victor Von Arx as plaintiff in error shall prosecute said Writ of Error to effect and if he fails to make good his plea, shall answer all costs and damages, then this obligation shall be null and void, otherwise to remain in full force and effect.

WITNESS our hands this the 28th day of January, A. D. 1916.

VICTOR VON ARX,

By J. H. COBB,

His Attorney of Record.

EMERY VALENTINE.

Approved this the 31st day of January, A. D. 1916.

ROBERT W. JENNINGS,

Judge.

Filed in the District Court, District of Alaska, First Division, Jan. 31, 1916. J. W. Bell, Clerk. By John T. Reed, Deputy. [105]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1247-A.

VICTOR VON ARX,

Plaintiff,

vs.

W. A. SCHAEFER and JOHN HANSON,

Defendants.

Citation.

United States of America,—ss.

The President of the United States to W. A. Schaefer and John Hanson, and to Mr. Z. R. Cheney, their Attorney, GREETING:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the city of San Francisco, State of California, within thirty days from the date of this writ pursuant to a writ of error filed in the clerk's office of the District Court for Alaska, Division Number One, in a case where Victor Von Arx is plaintiff and you are defendants in error, then and there to show cause if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States and the Seal of the District Court for Alaska, Division Number One, this the 31st day of January, 1916.

ROBERT W. JENNINGS,

Judge.

[Seal]

Attest: J. W. BELL,

Clerk [106]

Service of the above and foregoing Citation in Error admitted this the 31 day of December, 1915.

Z R. CHENEY,

Attorney for W. A. Schaefer and John Hanson.

Filed in the District Court, District of Alaska,
First Division. Jan. 31, 1915. J. W. Bell, Clerk.
By John T. Reed, Deputy. [106½]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1247-A.

VICTOR VON ARX,

Plaintiff,

vs.

W. A. SHAFER and JOHN HENSON,

Defendants.

Praecipe for Transcript of Record.

To the Clerk of the Above-entitled Court.

Kindly prepare and transmit to the Circuit Court
of Appeals for the Ninth Circuit copies of the fol-
lowing:

1. Complaint.
2. Amended Answer of Shafer.
3. Amended Answer of Henson.
4. Replies to Amended Answers.
5. Judgment.
6. Bill of Exceptions.
7. Assignment of Errors.
8. Writ of Error.
9. Bond.
10. Citation.

C. H. COBB,

Attorney for Plaintiff in Error.

Filed in the District Court, District of Alaska,
First Division. Aug. 21, 1916. J. W. Bell, Clerk.
By L. E. Spray, Deputy. [107]

In the District Court for the District of Alaska, Division No. 1, at Juneau.

United States of America,
District of Alaska,
Division No. 1,—ss.

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

I, J. W. Bell, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached 107 pages of typewritten matter numbered from 1 to 107, both inclusive, constitute a full, true, and complete copy, and the whole thereof, prepared in accordance with the Praeceptum of the plaintiff and plaintiff in error on file herein and made a part hereof, in the cause wherein Victor Von Arx is plaintiff in error and W. A. Shafer and John Henson are defendants in error, No. 1247-A, as the same appears of record and on file in my office, and that the said record is by virtue of the Writ of Error and Citation issued in this cause and the return thereof in accordance therewith.

I do further certify that this transcript was prepared by me in my office, and the cost of preparation, examination, and certificate, amounting to \$44.85 has been paid to me by counsel for plaintiff in error.

IN WITNESS WHEREOF I have hereunto set

my hand and the seal of the above-entitled Court
this 21st day of August, 1916.

[Seal]

J. W. BELL,
Clerk.

By _____,
Deputy.

[Endorsed]: No. 2856. United States Circuit
Court of Appeals for the Ninth Circuit. Victor
Von Arx, Plaintiff in Error, vs. W. A. Shafer and
John Henson, Defendants in Error. Transcript of
Record. Upon Writ of Error to the United States
District Court of the District of Alaska, Division
No. 1.

Filed September 1, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.